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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 KATHRYN TOWNSEND GRIFFIN, *et al.*,

4 Plaintiffs,

5 v.

17 Cv 5221 (LLS)

6 EDWARD CHRISTOPHER SHEERAN, personally  
7 known as Ed Sheeran, *et al.*,

8 Defendants.

-----x

9 New York, N.Y.  
10 April 27, 2023  
11 11:15 a.m.

12 Before:

13 HON. LOUIS L. STANTON,

14 District Judge  
15 - and a Jury -

16 APPEARANCES

17 FRANK & ASSOCIATES PC  
18 BY: PATRICK RYAN FRANK  
19 KEISHA RICE  
20 KATHERINE VIKER  
21 - and -

22 BEN CRUMP LAW  
23 BY: BEN CRUMP  
24 Attorneys for Plaintiffs

25 PRYOR CASHMAN LLP  
Attorneys for Defendants  
BY: ILENE SUSAN FARKAS  
DONALD S. ZAKARIN  
ANDREW MARK GOLDSMITH  
BRIAN MAIDA

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(Trial resumed; in robing room)

THE COURT: What are we here about?

MR. FRANK: Your Honor, it's pursuant to the plaintiff's request. We filed a motion, a fifth motion in limine last week, and the reason why we did so was in connection with the slides that were provided by Dr. Ferrara who is going -- the defendant's expert who is going to testify shortly.

THE COURT: Today?

MR. FRANK: I don't know whether he's going to testify today or not.

MS. FARKAS: Probably next week.

MR. FRANK: The reason why we're bringing it up today is because the subject matter of Dr. Ferrara's testimony that we -- prospective testimony we have a problem with is that he has come up with a new opinion and new information as it relates to what he's going to talk about.

Our issue is the song by Mary Wells, I think it's called *My Sweetest Boy*, this is referenced as prior art. The first time it has been brought up was when the slides were provided to us by the defendant last week. It is not in any of Dr. Ferrara's reports. It's never been disclosed before. But obviously Dr. Ferrara has not testified yet.

So that wouldn't be a problem but for the fact that Ms. Farkas elicited testimony yesterday from our expert about

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1 that very song.

2 THE COURT: Well, well.

3 MR. FRANK: Yes.

4 THE COURT: Why not?

5 MR. FRANK: Because that is -- she did it predicated  
6 on the new opinion, the new prior art that was provided by  
7 Dr. Ferrara a week ago. It was not in any of his expert  
8 reports. It was not disclosed within discovery. It was  
9 disclosed a week prior to the commencement of trial. So we do  
10 not believe that they have -- they should be allowed -- they  
11 should be disallowed from referencing that song or Dr. Ferrara  
12 from testifying with regard to that song.

13 Similarly, your Honor, you had made a ruling on one of  
14 their motions in limine based on the absence of an opinion by  
15 Dr. Stewart in one of his reports. We're asking that the same  
16 be done here. If they can furnish they ever disclosed that  
17 song before last --

18 Did you?

19 THE COURT: Number one, be still, starting now.

20 MR. GOLDSMITH: I apologize.

21 THE COURT: Don't make gesticulations.

22 MR. GOLDSMITH: I apologize, your Honor.

23 THE COURT: Don't speak. I know you're here, and  
24 anybody here will be heard --

25 MR. GOLDSMITH: I apologize, your Honor.

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1 THE COURT: -- at a proper time and in a proper  
2 manner.

3 MR. GOLDSMITH: May I speak, your Honor?

4 THE COURT: Excuse me, no.

5 MR. GOLDSMITH: OK.

6 MR. FRANK: Your Honor, the only other thing I would  
7 say it's a new song not disclosed.

8 THE COURT: You said that.

9 MR. FRANK: What we're asking for is that it be, the  
10 reference to it --

11 THE COURT: What's the point at issue?

12 MR. FRANK: The prior art argument. They are using it  
13 in support to bolster their prior art argument.

14 THE COURT: In what connection?

15 What's the point at issue?

16 MR. FRANK: They are saying that the combination of  
17 chords, common elements as part of our selection and  
18 arrangement claim, existed prior to *Let's Get It On*.

19 THE COURT: What is the evidence that you want to  
20 elicit?

21 What's your view of this dispute?

22 MS. FARKAS: So there is a few things I would like to  
23 say, your Honor.

24 First of all, their entire motion is predicated on  
25 something that's simply not true. The timing of this

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1 disclosure, they keep -- so they keep saying that we disclosed  
2 the information late. We didn't.

3 And in terms of what the evidence goes to, there is no  
4 new opinions. This goes to a key issue in dispute that  
5 Dr. Ferrara has in his original report and this is just more  
6 evidence that supplements it.

7 The notion that we should be precluded, and Mr. Bosman  
8 can talk more about the timing issues.

9 THE COURT: What I want to understand is what the  
10 issue is about, not issues of whether you can be precluded or  
11 can say this or say that.

12 What are we talking about?

13 MS. FARKAS: The relevance, your Honor?

14 THE COURT: What does it have to do with --

15 MS. FARKAS: So the issue that this pertains to is the  
16 very issue in dispute, which is whether or not the combination  
17 of the elements at issue existed in prior art. This has all  
18 been disclosed to them well in advance of trial, certainly much  
19 earlier than the entirely new testimony of their expert that  
20 was dumped on us a week before trial.

21 None of this is new opinions of Dr. Ferrara.  
22 Dr. Ferrara's opinions have been unwavering since 2018. All  
23 this evidence does is supplement those same opinions that he's  
24 had from the beginning and many of these -- we disclosed three  
25 years ago that we had 52 examples of prior art.

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1 Did they ask for it? No. And then, what, certainly  
2 by the latest six weeks before trial, we had identified every  
3 single one of these songs to them. Their expert had ample time  
4 to look at them. They are publicly available. Dr. Ferrara  
5 wasn't changing his opinions whatsoever. They were just more  
6 examples.

7 THE COURT: OK. Too much history.

8 MS. FARKAS: I shall stop.

9 THE COURT: He's not going to testify today?

10 MS. FARKAS: He is not.

11 THE COURT: We're not going to sit tomorrow. You've  
12 got three days to take this and analyze it and date it and  
13 react to it.

14 MR. FRANK: Your Honor.

15 THE COURT: The motion is denied.

16 MS. FARKAS: Thank you, your Honor.

17 MR. GOLDSMITH: Thank you, your Honor.

18 MR. FRANK: Your Honor, if I may --

19 THE COURT: Of course.

20 MR. FRANK: -- supplement?

21 Our issue is not with any of the other prior art that  
22 they've referenced. Our issue is with one song that was not  
23 disclosed.

24 THE COURT: I understand that.

25 MR. FRANK: They did not disclose it. The problem is,

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1 and they kind of --

2 THE COURT: How can it be an issue of fact whether you  
3 disclosed it or not?

4 MR. GOLDSMITH: Yes, your Honor. Thank you.

5 I am equally baffled, which is why I was  
6 gesticulating. I apologize.

7 THE COURT: I wasn't asking about your internal  
8 emotional state, I'm asking about how --

9 MR. GOLDSMITH: We disclosed it on March 13.

10 THE COURT: Show me the disclosure.

11 MR. GOLDSMITH: I can go get it. It's at counsel  
12 table.

13 THE COURT: Go get it.

14 How are we doing on the jurors?

15 THE DEPUTY CLERK: They are all here. I had told them  
16 that sometimes they might come out late because there might be  
17 some type of a conference between the attorneys.

18 (Discussion off the record)

19 MR. GOLDSMITH: Judge, I have my laptop here, my  
20 colleague's laptop, with an e-mail dated March 13 that says --

21 THE COURT: Show it to him.

22 MR. GOLDSMITH: -- to Pat.

23 This is to you?

24 May I put it on the table?

25 THE COURT: Sure.

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1 MR. GOLDSMITH: In addition to the below noted  
2 change -- because I had sent him an e-mail earlier about  
3 changes to the liability pretrial order -- we have made a few  
4 minor changes reflected in the attached track changes redline.

5 Now I'm opening the track changes redline, and  
6 paragraph 18 is our proposed findings of fact. And in redline,  
7 it's underlined and highlighted, it lists *You Lost the Sweetest*  
8 *Boy*, 1963, by Brian Holland, Lamont Dozier, and Edward Holland  
9 Jr., as recorded by Mary Wells.

10 That was March 13.

11 MR. FRANK: The operative date being March 13, well  
12 after discovery had closed in the case.

13 THE COURT: Well, that's too bad.

14 MR. FRANK: OK, your Honor. I wanted to make that  
15 objection.

16 THE COURT: Motion denied.

17 MR. FRANK: Thank you, your Honor.

18 MS. FARKAS: Thank you, your Honor.

19 (Continued on next page)  
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22  
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Cross - Stewart

1 (In open court; jury not present)

2 THE COURT: Good morning.

3 ALL PRESENT: Good morning, your Honor. The jury is  
4 coming right in. You're welcome to sit, but the jury is coming  
5 right in.

6 We need to get Stewart in his seat.

7 (Jury present)

8 Another conference of counsel on a collateral point,  
9 which it was better to get rid of before disrupting in the  
10 middle of the day. I'm aware that you were waiting, and I keep  
11 it as short as I can.

12 ALEXANDER STEWART, resumed.

13 THE COURT: Good morning, Dr. Stewart. You are  
14 reminded that you're still under oath.

15 THE WITNESS: Yes, of course. Thank you.

16 CROSS-EXAMINATION

17 BY MS. FARKAS:

18 Q. Good morning, Dr. Stewart.

19 A. Good morning, Ms. Farkas.

20 Q. I would like to start off today by looking at what you call  
21 the opening melody.

22 A. Yes.

23 Q. I would like to look at the Deposit Copy, if we can pull up  
24 your slide 37, please.

25 Can you identify the top transcription for us, please?

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Cross - Stewart

1 A. Yes. That's simply the notation that's in the Deposit  
2 Copy.

3 Q. And that's what you're calling now the opening melody,  
4 correct?

5 A. But it's the first phrase in *Let's Get It On* and it is  
6 transposed to D.

7 Q. And how many pitches are actually expressed in the Deposit  
8 Copy of this melodic segment?

9 A. I think 14.

10 Q. And your prior transcriptions before last week, the prior  
11 transcriptions that were in this case, am I correct that your  
12 prior transcriptions of this melody only showed nine pitches?

13 A. I would have to see it.

14 Q. You don't remember?

15 A. The exact number of pitches? No.

16 Q. OK. Well, let's pull up Exhibit 3 from Dr. Stewart's  
17 report.

18 It's OK. I will represent to you that your prior  
19 transcriptions in this case had nine pitches.

20 A. Well, I really think I would like to see it.

21 Q. OK. I'm trying to get it.

22 A. Sorry.

23 Q. Here, you know what, I have it for you.

24 Example three, I'm sorry.

25 MS. FARKAS: Is there some feedback; is anybody else

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Cross - Stewart

1 hearing that?

2 THE DEPUTY CLERK: Yes, we're working on it.

3 MS. FARKAS: OK.

4 Your Honor, if I can just approach the witness?

5 I can show him a page from his report.

6 MR. FRANK: Do you have a copy for me?

7 MS. FARKAS: It's your expert's report, page seven.

8 MR. FRANK: Can we have it?

9 BY MS. FARKAS:

10 Q. I'm trying. It's now projected on the screen for everyone.

11 A. Could you show that first page of the report again?

12 Q. The entire page it's on?

13 A. A moment ago you put the first page up which had the date  
14 and so forth.

15 Q. Hold on. I'll give you the whole thing.

16 It's everything now but that page.

17 A. Thank you. OK. December 2017 report.

18 Q. Dr. Stewart, have you had a chance to look at your example  
19 three from your 2017 report?

20 A. Yes.

21 Q. Does that refresh your recollection as to how many pitches  
22 you identified in the opening melody of *Let's Get It On* prior  
23 to last week?

24 A. I see 11.

25 Q. How are you counting 11?

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Cross - Stewart

1 A. Well --

2 Q. Let's look at the last three notes over the notes baby.

3 So the first two of those notes you would count that  
4 as one note or two? One pitch, excuse me.

5 A. Oh, that's one. It's tied.

6 Q. OK. So you want to try again?

7 A. I get 11, counting the raised note, the inflected notes.

8 Q. Let's look at how you actually charted it in your report.

9 Can you look a further down on that page and count how  
10 many pitches you charted?

11 A. I'm not sure what you're getting at. I'm counting 11  
12 pitches there.

13 Q. I'm asking you to look at your own report, sir.

14 If you look at that -- look at the page that I gave  
15 you.

16 A. Yes.

17 Q. And if you count the number of pitches that you charted.

18 A. Are you saying that different pitches or the number of  
19 notes?

20 There is a difference between notes and pitch.

21 Q. Yes, there is. I'm asking pitches.

22 A. How many different pitches are heard?

23 Q. Can you go further down the page, please.

24 So you wrote following standard musicological  
25 procedure, the first phrase in each song can be converted to

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Cross - Stewart

1 the following pitch sequence.

2 How many pitches in your pitch sequence for *Let's Get*  
3 *It On* did you display there?

4 A. OK. In that pitch sequence, there are only one, two,  
5 three, four, five, six, seven -- nine, yes.

6 Q. OK. So now let's compare the pitches that are actually in  
7 the Deposit Copy of *Let's Get It On* with the pitch in your  
8 report.

9 Scott, would you mind. It's the pitches, the two  
10 comparison of the LGO pitch sequences. No, sorry. I can take  
11 back the report from you.

12 It's OK. We'll move on. I would like to turn to the  
13 slide that we were referring to before where you defined  
14 melody.

15 Could you read that definition into the record,  
16 please?

17 A. Melody is defined as "pitched sounds in musical time" or  
18 the interaction of rhythm and pitch. The Harvard and Oxford  
19 Dictionaries of Music further explain that, along with pitch,  
20 duration or rhythm is an essential element in the formation and  
21 recognition of melodies.

22 While we may separate these elements for the purposes  
23 of analysis, it is essential to remember that both are defining  
24 characteristics of melody ...

25 Q. So not only is the existence of duration important, but the

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Cross - Stewart

1 particular duration of each note within a melody is essential  
2 as well, wouldn't you agree?

3 A. Yeah. They are often separated for the purposes of  
4 analysis, but the overall melody, it's important to take into  
5 consideration all these elements.

6 Q. OK. So let's look at your slide 49.

7 Can you please identify what this is for us?

8 A. This is from my presentation this week. It's a Deposit  
9 Copy representation on the top and transcription of *Thinking*  
10 *Out Loud*, the first phrase. So it's the first phrase of each  
11 song.

12 Q. OK. And in your declaration you had called it melody A,  
13 but now you're calling it the opening melody, just so there is  
14 clarity in the record?

15 A. Yes.

16 Q. And you provide scale degrees under your transcription --  
17 under your transcriptions on slide 49, correct?

18 A. Yes, I do.

19 Q. OK. And we're looking at your charting of those pitch  
20 sequences right there?

21 A. Yes.

22 Q. If you look at your *Let's Get It On* charting, you have two  
23 number twos in parentheses that look like it's a smaller font.

24 Why are those smaller in size?

25 A. Well, I was attempting to explain that during my

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Cross - Stewart

1 presentation that those two pitches are on a vowel sound and  
2 they are extremely rapid. The 30-second note is like 7.5  
3 hundredths of a second, and so there's no way that a singer  
4 would really be able to articulate those as distinct notes.

5 Q. OK. But we're talking about sheet music right, we're not  
6 talking about any particular performance of the sheet music,  
7 right?

8 A. But anything --

9 Q. Yes or no?

10 MR. FRANK: Excuse me.

11 A. On a page --

12 MR. FRANK: Excuse me, your Honor. We have an  
13 objection, but we would like a sidebar for that, please.

14 THE COURT: What's your objection?

15 MR. FRANK: Well, this particular slide was excluded  
16 by you yesterday pursuant to the request of the defendants,  
17 from our presentation. They asked for it to be excluded and  
18 you did so, 49.

19 MS. FARKAS: 48, 50, and 51. That's incorrect, your  
20 Honor.

21 THE COURT: No, the three others were excluded, 48,  
22 50, and 51, if memory serves, and 49 was admitted and you were  
23 here.

24 MR. FRANK: I apologize, your Honor.

25 THE COURT: You should.

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Cross - Stewart

1 MR. FRANK: I'm mistaken.

2 BY MS. FARKAS:

3 Q. I think there was a question pending, but I'll let you --

4 A. I wasn't done answering.

5 Q. Maybe there wasn't a question pending. Let me...

6 All of the notes that appear in your transcription,  
7 they actually appear on the Deposit Copy, correct?

8 A. Yes, but I was trying to explain that anything can be put  
9 on a piece of paper.

10 Q. OK. But all of the --

11 A. In terms of -- it doesn't matter what -- but it's turned  
12 into, you know, actual sound. There is some things you could  
13 write on a piece of paper that would be impossible to turn into  
14 sound that would be clearly representing that.

15 MS. FARKAS: I move to strike that answer as  
16 nonresponsive and lacks foundation.

17 THE COURT: Try rephrasing the question.

18 MS. FARKAS: Sure.

19 BY MS. FARKAS:

20 Q. All of the notes that are in the Deposit Copy are  
21 registered with the copyright office, not only the ones that  
22 you think are audible, correct?

23 A. Yes.

24 Q. If we look at how you transcribed *Thinking Out Loud*, you  
25 have a small note here that we have identified or you have



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Cross - Stewart

1 identified as a grace note, correct?

2 A. Yes.

3 Q. But you don't chart the grace note when you chart the pitch  
4 sequence, do you?

5 A. That's because --

6 Q. Yes or no, sir?

7 A. It's the same toneme. It's number three and it is slurred  
8 in. It's more of an inflection than a distinct pitch.

9 Q. So if a pitch repeats itself, you don't chart it?

10 A. I'm sorry?

11 Q. If a pitch repeats itself, you don't chart it?

12 A. I didn't say that. I said it's an inflection and...

13 Q. If we look at the pitch sequence that you have here, *Let's*  
14 *Get It On* is three, four, five, four, and the first four notes  
15 of *Thinking Out Loud* are three, five, six, five.

16 Do you see that?

17 A. Yes.

18 Q. Those are the threes line up and that's it, right?

19 A. In terms of vertically lining up, yes, you're right.

20 Q. And you've -- it seems like the only notes that actually  
21 line up in terms of the pitch sequences are the first three and  
22 then you have a four five four and then there's another three.

23 Basically if you count the notes that line up, we have  
24 four of the 14 notes, is that correct?

25 A. Didn't you leave off two there?

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Cross - Stewart

1 Q. OK, five. I'll give you one more.

2 The pitch sequences are different, aren't they?

3 A. Well, why don't you go back to where we can see both  
4 transcriptions at the same time, please?

5 Q. Sure. Can you answer my question first?

6 A. Yeah. So I would say the one also lines up, it's very --

7 Q. Not the way you charted it, sir.

8 As a whole, these pitch sequences are different,  
9 aren't they?

10 A. They have similarities and they have differences. I  
11 pointed out the differences when I did my presentation.

12 Q. And looking at the *Thinking Out Loud* Deposit Copy, you have  
13 indicated certain notes are the Es are naturals, correct, the  
14 three pitches, that they are not sharps as they normally would  
15 be in the key of D major?

16 A. Yes. They are the same number three because it's standard  
17 in blues analysis, with which I'm very familiar. Just call  
18 that three because --

19 Q. You call that three. If it's a three sharp or three flat  
20 or three natural, you just treat it all the same?

21 A. In terms of blues' scholarship and theory, yes, it's the  
22 same.

23 Q. Is *Thinking Out Loud* --

24 A. It's still heard as number three in the song.

25 Q. Is *Thinking Out Loud*, would you call it a blues song?

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Cross - Stewart

1 A. No, that was part of my point. It was less bluesy  
2 sounding.

3 Q. Yeah, OK. Now, your pitch analysis here there is nothing  
4 in this pitch analysis presents the jury with an analysis of  
5 the rhythmic durations within these opening melodies, correct?

6 A. In my presentation?

7 Q. In this analysis, there is nothing -- you did not present  
8 the jury with an analysis of rhythmic durations of the notes in  
9 the opening melodies in *Let's Get It On* and thought, did you?

10 A. No, but I mentioned certain aspects of it where the phrases  
11 begin rhythmically and the -- and where they sound similar.

12 Q. I'm trying to get you to answer my question, sir.

13 A. Yeah.

14 Q. You didn't present the jury with an analysis of the metric  
15 placements of any of these notes, did you?

16 A. Well, I did in terms of the beginning and the end of the  
17 phrase.

18 Q. Beginning and the end. OK.

19 A. Um-hmm.

20 Q. Let's turn to what you have identified as the *Thinking Out*  
21 *Loud* chorus melody B, which is your slide 67.

22 Now, the melody you selected from *Thinking Out Loud* is  
23 on the chorus of *Thinking Out Loud*, correct?

24 A. That is the first phrase, yes.

25 Q. Well, it's actually the second line of the chorus, right;

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Cross - Stewart

1 you left out the melody that goes with so honey now?

2 A. There's a pickup to the chorus. It's not technically  
3 within the actual chorus.

4 Q. Your testimony is that it's not within the chorus?

5 A. As I recall, it's the measure before the chorus begins.

6 Q. OK.

7 A. I could look at the sheet music or the transcription that I  
8 did and refresh my memory, but that's what I recall.

9 Q. OK. And then you chart the pitches on slide 67 underneath  
10 it, right?

11 A. Yes.

12 Q. There's nothing indicating the duration of each pitch in  
13 this pitch sequence, is there?

14 A. Of course not. It's a pitch sequence, and I've made it  
15 clear that when you're doing the pitch sequences, this is the  
16 way it's done. It's standard.

17 Q. Nothing indicating the metric placement of these notes  
18 within the measure, correct?

19 A. No, because it's about the pitch sequence.

20 Q. Right. And pitch sequences are not, without rhythm, are  
21 not melody, correct?

22 A. Yeah.

23 Q. By your own definition?

24 A. Um-hmm.

25 Q. Yes; correct?

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Cross - Stewart

1 A. Yeah. Overall melody includes the durations and the  
2 rhythms.

3 Q. Right. And your pitch sequences do not include the  
4 rhythmic durations and the metric placement, correct?

5 A. I did not take the jury or the court through each note in  
6 terms of the different rhythmic considerations. I consider  
7 that these are very similar rhythmically.

8 Q. OK. Well, I'm not asking --

9 A. They are not exactly the same. Clearly they are not  
10 exactly the same.

11 Q. And the pitch sequences are different, aren't they?

12 A. They are very close.

13 Q. Well, they are not in the same order, are they; the ones  
14 you highlighted in red, the pitches are not in the same order,  
15 are they?

16 A. I think they are.

17 Q. Well, out of 11 pitches, you have five lining up, correct?

18 Let's look at the second two pitches. You have a four  
19 four in *Let's Get It On*, you have a five five in *Thinking Out*  
20 *Loud*.

21 Those are different, aren't they?

22 A. You're not counting the three three, which also lines up,  
23 which is in terms of the pitch sequence.

24 Q. Isn't that a six?

25 Oh, there's a six. Six out of 11 line up is what

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Cross - Stewart

1 you're saying?

2 A. Is there a question there?

3 Q. I'm not sure.

4 Have you transcribed a grace note in the *Thinking Out*  
5 *Loud* melody in slide 67, that first note --

6 A. Yes.

7 Q. -- of *Thinking Out Loud*?

8 And unlike your pitch chart of the opening melody in  
9 which you show a grace note, but you don't include the grace  
10 note in your pitch chart, this time now you do chart the grace  
11 note in your pitch chart, right?

12 A. That's because this is a different pitch. It's not three  
13 and the other one it was the same toneme that was --

14 Q. It was a yes-or-no question. I wasn't asking you why. I'm  
15 just asking you yes or no.

16 This time you chart it, correct?

17 A. For very good reason, yes.

18 Q. And the reason is because it lines up better with *Thinking*  
19 *Out Loud* -- with *Let's Get It On*, right?

20 A. Well, that is what you would like me to say. That's not  
21 why.

22 Q. I'm just looking at it. You know, it lines up, doesn't it?

23 A. But that's -- the sound is there. I heard it and I  
24 transcribed it, and it's a different -- clearly a different  
25 pitch, whereas in the other situation it was they were both

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Cross - Stewart

1 three. They were the same toneme.

2 Q. Well, you have no problem charting notes that are the same  
3 when they appear together. You've got a three three, you've  
4 got a five five, you've got a four four. So it's basically  
5 when a grace note works for you, you'll include it in the  
6 charting; when it doesn't, you omit it, is that correct?

7 A. Absolutely not, no. These are distinct pitches where they  
8 are repeated, and they are even set to different symbols so  
9 they are clearly articulated.

10 Q. I'm going to show you what's been marked as Joint  
11 Exhibit 4.

12 This is the published sheet music for *Thinking Out*  
13 *Loud*. Can you show us the portion of *Thinking Out Loud* that  
14 we're talking about here?

15 A. It would be the first system at the top. It's more than  
16 the first system.

17 Q. No, no. We're talking about the chorus melody now,  
18 correct, Dr. Stewart?

19 We're talking about your grace note, when you  
20 transcribed in the chorus melody, not the beginning?

21 A. Yeah. But you put up the beginning here, so I'm not sure  
22 what you're doing.

23 Q. Well, tell us where it is. Do you need to turn to the next  
24 page?

25 A. What --

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Cross - Stewart

1 Q. OK.

2 A. You put up the beginning of the piece.

3 Q. So, wait.

4 MS. FARKAS: Scott, can you go back please where you  
5 just were?

6 A. So are we talking about the beginning or the --

7 Q. I'm talking about --

8 A. The chorus?

9 Q. Your chorus melody that you identified in this case. Can  
10 you find it?

11 MS. FARKAS: Scott, can you go to the next page,  
12 please.

13 So if we look at this page which looks like it starts,  
14 if we're going around bar 23, maybe you can make it a little --

15 Is that large enough for you, Dr. Stewart?

16 A. Sure.

17 Q. You have a grace note charted before the lyric take me into  
18 your loving arms.

19 Do you see a grace note there?

20 A. No. There is a lot of things missing from this. It's  
21 standard with sheet music, it's --

22 Q. Simple question, Dr. Stewart.

23 A. Somebody was hired to do, basically, a piano score  
24 arrangement of this piece, which is not purported to be a  
25 transcription of what is on the recording. It's somebody who



N4RsGRI1

Cross - Stewart

1 did a piano and voice arrangement of it.

2 MS. FARKAS: I would like to move to strike that  
3 answer as nonresponsive.

4 A. It also shows here --

5 Q. Dr. Stewart, there is no question pending. Thank you.

6 THE COURT: There is an unanswered question pending  
7 about the grace note.

8 MS. FARKAS: Correct, because his answer didn't answer  
9 my question. I moved to strike. I would like an answer to my  
10 question.

11 A. Could you -- I didn't...

12 BY MS. FARKAS:

13 Q. Yes or no?

14 A. I didn't realize there was still a question pending.

15 Could you repeat it, please?

16 Q. It's only pending because you have yet to answer it.

17 There is no grace note before the lyric take in the  
18 public sheet music of *Thinking Out Loud*, correct?

19 A. It does not represent what's on the recording. But no,  
20 it's not on the published sheet music, which is --

21 Q. Thank you.

22 A. -- an arrangement of the song published. I think what  
23 we're dealing with here is what is on the recording of *Thinking*  
24 *Out Loud*. That's my understanding. That's the copyrighted  
25 work.

N4RsGRI1

Cross - Stewart

1 MS. FARKAS: I would like to strike this recitation by  
2 Dr. Stewart for going on much longer than what I even asked of  
3 him, please.

4 THE COURT: Denied.

5 Q. When we chart the pitch in the chorus melody without the  
6 grace note consistent with the published sheet music for  
7 *Thinking Out Loud*, it looks like this.

8 And when we look at it like this, only four notes line  
9 up, correct?

10 A. If you want to look at it like this, the way you have  
11 arranged it, that is what it shows.

12 Q. The notes are scattered. There is a note that lines up  
13 here and then two notes later another one and then three notes  
14 later another one, correct?

15 A. Well, you move back and forth between the transcriptions of  
16 the recording and then the sheet music, so this is  
17 representing -- now, what's on the sheet music is what you say?

18 Q. Yes. This is without your --

19 A. The arrangement prepared for the sheet music?

20 Q. This is what is on the published sheet music of the song  
21 *Thinking Out Loud*?

22 A. Which is an arrangement of *Thinking Out Loud*. If you  
23 purport that's what's on the arrangement of *Thinking Out Loud*  
24 that was published as sheet music, I wouldn't argue with that.

25 Q. Thank you.

N4RsGRI1

Cross - Stewart

1 Let's turn to slide -- your slide 73.

2 Am I correct that this is your slide that compares the  
3 purported melodies of the section of *Let's Get It On* with the  
4 lyric we're all sensitive people to a portion of the interlude  
5 of *Thinking Out Loud*, that's correct?

6 A. Yes.

7 Q. Now, the melody that you have selected from *Thinking Out*  
8 *Loud* is in the interlude, correct?

9 A. Yes, it is.

10 Q. A guitar solo while Mr. Sheeran is sings the lyrics la la  
11 la?

12 A. Yes, yeah.

13 Q. The melody you've selected from *Let's Get It On* doesn't  
14 appear in the interlude section of *Let's Get It On*, correct?

15 A. There is no interlude in *Let's Get It On*, there's a bridge.  
16 But I don't think it really matters where something comes from.  
17 If there is a similarity, it's a similarity.

18 Q. OK.

19 A. So if somebody borrows something from another piece and  
20 they put it in a different place, it doesn't change the fact  
21 that it is borrowed, speaking generally.

22 Q. Well, Dr. Stewart, didn't you testify completely to the  
23 contrary to that at your deposition?

24 A. I don't think so.

25 Q. OK. I would like to just pull up your deposition testimony

N4RsGRI1

Cross - Stewart

1 from your deposition in this case at page 233, lines 6 through  
2 21.

3 I will read what you said. You said:

4 "A. We've discussed why this is all a distortion to begin  
5 with --

6 MS. FARKAS: I'm sorry. Let me skip to line 14.  
7 Well, no. I'm going to start over.

8 "A. We discussed why this is all a distortion to begin with  
9 because it's not looking at -- it's looking at -- you know,  
10 there's so many things we've already talked about.

11 "Q. Can you answer --

12 "A. That kind of distortion --

13 "Q. Can you answer --

14 "A. We're looking at two different parts of the song. Now  
15 we're looking at yet another part. We're looking at the chorus  
16 of *Thinking Out Loud* as opposed to the verse of *Let's Get It*  
17 *On*. Why aren't we comparing chorus to chorus?"

18 Q. I will represent to you that that is your prior testimony  
19 in this case.

20 A. Yeah. I don't recall --

21 Q. There's no question.

22 A. I'm sorry.

23 Q. Let's return to slide 73. You write scale degrees below  
24 each of the notes in the transcriptions and then you chart the  
25 pitches again at the bottom, isn't that correct?

N4RsGRI1

Cross - Stewart

1 A. Yes.

2 Q. In your transcription of the LGO Deposit Copy in slide 73,  
3 you tie the second to the last note to the last note, correct,  
4 the last two notes?

5 A. Yes, the five.

6 Q. And that's why you didn't write a second five scale degree  
7 under the pitch sequence?

8 A. Of course.

9 Q. OK. Let's pull up the Deposit Copy at page two.

10 If you could identify the melody and the lyrics that  
11 correspond to we're all sensitive people with so much to give.

12 If you could look at the last -- let me know when  
13 you've found it.

14 A. Yes, I've got it.

15 Q. If you look at the last three notes sung to the lyric give,  
16 do you agree that there is no tie between the last two notes?

17 A. OK. We're going from one -- how do I put this -- this is  
18 written with the note values doubled, compared to what we're  
19 using in our transcriptions that we're comparing.

20 Q. I'm just asking if you the last two notes are tied?

21 A. Could we go back to the other slide?

22 Well, it's going to be different because of the  
23 rhythmic -- the bar lines are different in this example from  
24 the Deposit Copy.

25 Q. I don't --

N4RsGRI1

Cross - Stewart

1 A. So that is going to make a difference in how the ties and  
2 so forth come back, come out.

3 Q. You think that rhythmic duration changes whether the third  
4 and the third to the last note and last note are tied versus  
5 the second to the last note and last note are tied?

6 You think that is why your transcription is wrong?

7 A. Wait a minute. So we're talking about on the word give?

8 Q. Yes.

9 Let me ask you the question again just so we make sure  
10 we understand each other.

11 Do you agree that there is no tie between the last two  
12 notes in the Deposit Copy?

13 A. Well, there is a slur on -- on the same pitch on the same  
14 syllable it's hard.

15 Q. If you were just coming at this cold, Dr. Stewart, and I  
16 asked you to chart those last three pitches, how would you  
17 chart them?

18 First time today.

19 A. Can we go back to the other example for a moment?

20 Q. No. Actually, I want you to answer my question.

21 A. What is your question?

22 Q. If you came in cold today and I asked you, could you please  
23 chart those three pitches over the lyric give, what would you  
24 chart?

25 A. Well, in this meter with the tempo, with all the note

N4RsGRI1

Cross - Stewart

1 values doubled?

2 Q. Well, I don't know. You don't seem to ever count meter or  
3 rhythmic duration any other time that you're charting pitches,  
4 so why start now?

5 A. There's -- there's -- this is a different, um, way that  
6 it's notated. All the note values here are twice as long. And  
7 in the other example --

8 Q. OK.

9 A. So that is why I'm asking to go back and look at what was  
10 in the other example.

11 Q. Can you please chart the pitches as you would chart them if  
12 you had to do so right now for the first time?

13 A. What do you mean chart them?

14 Q. Would it be a six five or a six five five?

15 A. Well, I would look at the musical context and the fact that  
16 it's -- there's a slur there and it's the same pitch on the  
17 same syllable. I think this is really trivial thing to be hung  
18 up on, so I guess I would say five five. I mean, in the  
19 strictest sense, if you think that a significant omission or  
20 error, I certainly don't. I think ...

21 Q. OK. Thank you.

22 A. Yep.

23 We're not going to be able to see the other example?

24 Q. We're going to go back to now slide 73.

25 So given what we just discussed, would you agree that

N4RsGRI1

Cross - Stewart

1 your pitch sequence of *Let's Get It On* is inaccurate?

2 A. Well, if you would like to add another five at the end, I  
3 would be happy to do it.

4 Q. It's not what I would like. I'm trying to get an accurate  
5 depiction of the Deposit Copy. I'm not sure why this is a  
6 fight. I'm trying to get an actual depiction of the Deposit  
7 Copy, so I showed you the Deposit Copy.

8 People make mistakes. I'm not -- this is -- I'm not  
9 trying to elevate this any more than it needs to be. I'm just  
10 trying to get an accurate pitch sequence here.

11 Now that you've looked back at the Deposit Copy and  
12 had another opportunity to look at it, would you agree with me  
13 that there should be another five at the end of the *Let's Get*  
14 *It On* pitch sequence?

15 A. I would be happy to put another five at the end, sure.

16 Q. OK.

17 MS. FARKAS: Scott, can you put 73 back on, please.

18 Q. Now, the metric placements of these notes that you have  
19 highlighted are different, aren't they?

20 A. Yes.

21 Q. So, for example, the eight eight at the beginning of the  
22 LGO melody is within beat two, but the eight eight at the  
23 beginning of the *Thinking Out Loud* melody is within beat four,  
24 correct?

25 A. On these vocables, yes.



N4RsGRI1

Cross - Stewart

1 Q. And a metric placement within beat two is different from a  
2 metric placement within beat four, isn't it?

3 A. Sorry. Where?

4 Q. The metric, what we've just identified, the metric  
5 placement within beat two is different than putting notes  
6 within the metric placement within beat four, isn't it; it's  
7 different metric placement, right?

8 A. Yes. I mean, the pitches and the way -- well, the way this  
9 is perceived, it sounds like a very similar melody, but I  
10 wouldn't argue at all with the fact that the metric placement  
11 is different.

12 Q. And staying with the two pitches on scale degrees eight  
13 eight that you've highlighted at the beginning of the melody,  
14 the rhythmic durations of the eight eight are 16th notes and  
15 eighth note, correct?

16 I'm sorry. 16th note and an eighth note, correct?

17 A. No.

18 Q. What are they?

19 A. The first note is a 16th note and followed by eighth note  
20 and the other is eighth note triplets. So it is really -- if  
21 you divided up those two pitches in *Let's Get It On* more  
22 evenly, you would end up with the exact same rhythm as you have  
23 in *Thinking Out Loud*. You would be dividing the beat into  
24 three and starting on the second and third part of that  
25 division.

N4RsGRI1

Cross - Stewart

1 Q. You have to divide it to be the same?

2 A. The difference here you're talking about is so minuscule in  
3 terms of the rhythmic duration that I think it is completely  
4 insignificant.

5 Q. OK. But they are different, correct?

6 A. Notationally it looks different, but it's not. We're  
7 talking about hundredths of a second in terms of duration.

8 Q. Well, you say hundredths of a second there is no tempo in  
9 the *Let's Get It On* Deposit Copy.

10 That would change depending upon the tempo, correct?

11 A. I'm talking about the tempo in *Thinking Out Loud*, which we  
12 do know, and we're basically comparing them at the same tempo  
13 in order to have a valid comparison.

14 Q. OK. But you would agree with me that the metric placement  
15 and the rhythmic duration of those two first notes in each song  
16 is different?

17 A. I would agree with you that the metric placement is  
18 different. I don't agree with you that there is any  
19 significant difference in the duration.

20 Q. OK. And all these red arrows that some are pointing one  
21 direction, some are pointing another direction, it seems like a  
22 lot of work to find notes that mash up, doesn't it?

23 A. It didn't take me time at all.

24 Q. Um-hmm. Sure, it didn't.

25 And the spaces that you created in your pitch sequence

N4RsGRI1

Cross - Stewart

1 there, you create that of course makes them line up a little  
2 bit more, doesn't it?

3 A. It does because it's really just looking at the pitch  
4 sequence by itself.

5 Q. Yeah. But you didn't create those spaces in your other  
6 charts of pitch sequences, did you?

7 A. Are you talking about the space in *Let's Get It On* that I  
8 left?

9 Q. Yeah.

10 A. Yeah. I did that intentionally because I did not want to  
11 distort the fact that those are two separate phrases, and I  
12 made that clear in my testimony. I'm not trying to create a  
13 similarity that's not there, so I put a gap there to represent  
14 that we're going from one phrase to another.

15 Q. Now, just for that one purpose you considered, perhaps, a  
16 rest where you didn't do it in anything else, and it just so  
17 happens that it makes them line up a little bit more?

18 A. Not at all. We have two distinct phrases here, and I said  
19 in my testimony -- first of all, my analysis really focused on  
20 the first half of the phrase we're all sensitive people. This  
21 slide was merely to show that some of the pitch sequence  
22 continued on into the next phrase. I made that very clear in  
23 my testimony.

24 Q. Now, would you agree that the similarities in these pitch  
25 sequences is mostly due to the fact that they descend down the

N4RsGRI1

Cross - Stewart

1 scale stepwise, correct; *Thinking Out Loud* is almost completely  
2 stepwise?

3 A. Yes, but it's a descending scale with repeated notes.

4 Q. Right, eight, seven, six, five.

5 Is *Thinking Out Loud* the first song to descend  
6 stepwise down a scale?

7 A. Of course not.

8 Q. And *Thinking Out Loud* or *Let's Get It On* for that matter  
9 was hardly the first song to descend stepwise down a scale,  
10 correct?

11 A. Of course not. I've not seen any other song that did it  
12 over this particular harmonic and rhythmic structure that we  
13 have been looking at.

14 Q. Right. And isn't it true that repeating descending notes  
15 in a scale is probably centuries old?

16 A. Of course. It's the combination of this expression with  
17 the other expression that makes it a creative choice made by  
18 the composer. If it were just this by itself, I don't think we  
19 would be sitting here, but it's context harmonically.

20 Q. While *Thinking Out Loud* is almost completely stepwise,  
21 *Let's Get It On* is not, correct?

22 It goes eight seven and then it goes back up to eight  
23 then it goes seven, six, five, it skips four, right; so it's  
24 not completely stepwise, correct?

25 A. There is no four. But yes, it does have that one step back

N4RsGRI1

Cross - Stewart

1 up to eight, that's ...

2 Q. OK. We're done with this.

3 A. That's the difference.

4 Q. Thank you.

5 You now there's been talk about mashups and medleys  
6 and a bunch of terminology on that. But mashups and medleys  
7 and interpolations, they've been around for many years, right?

8 A. I wouldn't say mashups have been around for many years.  
9 That's more of a contemporary phenomenon with digital recording  
10 and so forth.

11 Q. But certainly before the one at issue in this case,  
12 correct?

13 A. What, mashup?

14 Q. Yes.

15 A. Yes, of course.

16 Q. And, in fact, musicians often perform mashups or medleys or  
17 interpolations during live performances, correct?

18 A. No.

19 Q. What about medleys or interpolations, that is a common  
20 thing during live performances, correct?

21 A. Yes, medleys and interpolations wouldn't be that uncommon.  
22 I think interpolations are probably less common, but...

23 Q. And --

24 A. But mashups are not something -- they usually involve  
25 recordings and playing two recordings simultaneously. So it's

N4RsGRI1

Cross - Stewart

1 not something that you expect typically in a live performance.

2 Q. How many live performances have you seen?

3 A. In my life, how many live performances?

4 Q. Have you seen a live performance of every performer that's  
5 happened over the last 20 years?

6 A. Well, I'll say that you often hear --

7 Q. Answer my question.

8 A. -- DJs do mashups because they are working with recordings.

9 Q. Well, you said --

10 I'll move on.

11 You testified that with respect to certain concert  
12 footage of Mr. Sheeran, whatever label you put on it, that it  
13 was significant in your mind because he didn't segway back --  
14 because, I'm sorry, the other mashups that you watched, OK, you  
15 watched concert footage of Mr. Sheeran and you dismissed them  
16 as not significant because he didn't segway back into the  
17 original song that he was performing and that was a distinction  
18 between the Zurich performance that we've been talking about,  
19 correct?

20 A. Yes. I made that point that it seemed to be unique among  
21 those performances.

22 Q. And are you aware that in a live performance of *Take It*  
23 *Back* and *Superstition* and *Ain't No Sunshine*, that Mr. Sheeran  
24 returns back to the song *Take It Back*, are you aware of that?

25 A. It's certainly possible.

N4RsGRI1

Cross - Stewart

1 Q. Are you aware that Mr. Sheeran also performed his song *I*  
2 *See Fire* and then segwayed into *Feeling Good* by Nina Simone and  
3 segwayed into *I See Fire*; are you aware of that?

4 A. No.

5 Q. Now, you've relied upon this video we've been talking it  
6 the Zurich performance, I think, where Mr. Sheeran -- where he  
7 segways into the lyrics of *Let's Get It On* while playing the  
8 chords of *Thinking Out Loud* during, a performance of *Thinking*  
9 *Out Loud*, correct?

10 A. I'm sorry. I didn't follow you.

11 Q. The Zurich performance that you rely upon, it's where  
12 Mr. Sheeran performs *Thinking Out Loud* and then he segways into  
13 singing certain lyrics from *Let's Get It On* over the chords of  
14 *Thinking Out Loud*, and then he segways back into the lyrics of  
15 *Thinking Out Loud*, correct?

16 A. Yes, I guess you could describe it that way.

17 Q. All right. I would like to show you a video and then I  
18 have a couple of questions for you after it.

19 (Video played)

20 BY MS. FARKAS:

21 Q. Dr. Stewart, doesn't this video demonstrate how one can  
22 play the melody and lyrics over one song over another if they  
23 share a similar chord progression?

24 A. Well --

25 Q. Yes or no?

N4RsGRI1

Cross - Stewart

1 A. -- that's the whole point of Axis of Awesome. They play  
2 these -- I think they are kind of making light of the fact that  
3 there are all these pop songs that use this four-chord schema.  
4 There's been a lot of analysis of this in terms of music  
5 theorists because of this phenomenon. It's something  
6 relatively recent in pop music, using these same four chords.  
7 That doesn't mean that every song would fit over these four  
8 chords, I think, but the point of the Axis of Awesome is that  
9 they chose songs that do.

10 Q. So that's a yes, that you can; if songs share a similar  
11 chord progression, you can sing the melody of one song or  
12 another song over that same chord progression, correct, just as  
13 demonstrated in that video?

14 A. Yes, um-hmm.

15 Q. I would like to just show you your c.v. quickly.

16 On page two of your c.v., you list a total of two  
17 books. Your first book was published in 2007 and it's entitled  
18 *Making The Scene: Contemporary New York City Big Band Jazz*; is  
19 that correct?

20 A. Yes.

21 Q. And the second book you list, am I correct that it's  
22 actually a translation into Spanish that you completed of  
23 someone else's book?

24 A. No, it's not into Spanish. It's from French and German  
25 into Spanish.



N4RsGRI1

Cross - Stewart

1 Q. OK. I'm not sure that's different from what I said.

2 That was a translation you did of someone else's book,  
3 correct?

4 A. Yes.

5 Q. And that was published about 20 years ago, right, in 2003?

6 A. Yes.

7 Q. And am I correct that your most recent published article  
8 was nine years ago, about 2014, is that correct?

9 A. Let me take a look.

10 I have a chapter forthcoming in a book on protest  
11 music by Oxford University Press that will be coming out very  
12 soon.

13 Q. OK. But before that --

14 A. So I'm still actively writing and researching.

15 In 2014, I published that article in the Law Review  
16 Journal. And then in 2013, I had two articles come out.

17 Q. I was just asking about the most recent. So 2014?

18 A. But there is a forthcoming chapter. I'm still publishing.

19 Q. Now, turning to page one of your c.v., in the section on  
20 your faculty ranks and dates at the University of Vermont, it  
21 says you were the assistant professor from 1999 to 2005, and  
22 the associate professor from 2005 to 2012, and then you were  
23 promoted to professor in 2012, is that correct?

24 A. That's what it says. That's what I recall.

25 Q. OK. But if we look at slide two that you presented to the

N4RsGRI1

Cross - Stewart

1 court yesterday, you indicated that your rank had been  
2 professor of music since 1999.

3 But you actually weren't promoted to professor until  
4 2012, isn't that correct?

5 A. That's not what that is meant to indicate at all. I meant  
6 that I've been employed there since 1999. It was not --

7 Q. Well --

8 A. To distinguish between the different ranks, I did not.

9 Q. -- but, you know, I think you, you know, of anyone would  
10 agree that there is a difference between professor and  
11 associate professor and assistant professor, right; that has  
12 meaning to you, correct?

13 A. That's ridiculous. That's not what this is about at all.  
14 I wasn't going to put the year of each rank's promotion on a  
15 slide.

16 What would be the point --

17 Q. The point would be to be accurate, so...

18 A. -- to show --

19 Q. So to say that you have been a professor of music at the  
20 University of Vermont since 1999 is actually incorrect?

21 A. Not the way it was intended to be stated. The day I  
22 started working there, the students address me as Professor  
23 Stewart, and I was thinking of it in that sense, not at all in  
24 terms of rank.

25 Q. I just want to talk a bit about your prior engagements on

N4RsGRI1

Cross - Stewart

1 copyright infringement claims.

2 Am I correct that there are three cases in which you  
3 testified in a case on the liability portion against  
4 Dr. Ferrara, who is defendant's expert in this case, is that  
5 correct?

6 A. Three, that's what you're saying?

7 Q. That is what I'm counting. You tell me if it's accurate.  
8 I have the *Led Zeppelin* case, the *Smith v. The Weeknd*, and the  
9 other one was *Batts v. Adams*; is that correct?

10 A. The other one was what?

11 Q. *Batts*, B-a-t-t-s, v. *Adams*.

12 A. Yeah. But we -- none of those -- we had a trial where we  
13 were opposed to one another back in -- I don't remember the  
14 exact year, if you want to pull up my c.v. -- where his side  
15 lost and the court cited my testimony as being --

16 Q. OK. Well, you're clearly anticipating my testimony. Let's  
17 stick with my questions.

18 OK. So we'll get to that one if you would like, but  
19 putting that one to the side right now, am I correct that the  
20 three cases where you were adverse to Dr. Ferrara on liability  
21 were the three that I mentioned?

22 A. I'm not sure what that means because we've been against  
23 each other on probably more than three cases and that's not  
24 including the one that I just mentioned, so...

25 Q. So let's talk about the one that you just mentioned.

N4RsGRI1

Cross - Stewart

1 The one that you just mention is the Bridgeport case,  
2 correct?

3 A. Yes.

4 Q. And you know, don't you, that at the point that Dr. Ferrara  
5 came into that case, that the defendants had already conceded  
6 liability because it was a sampling case and it was simply  
7 about damages at that point, correct?

8 A. I don't recall that exactly, but I know that they accepted  
9 my evaluation of the damages over his.

10 Q. But Mr. Ferrara had nothing to do with the claims of  
11 infringement or the liability aspects of that case, correct?

12 A. I don't know. I have no idea.

13 Q. In terms of your testimony versus his, his testimony that  
14 you're aware of had nothing to do with the infringement claim,  
15 it was on damages only, correct?

16 A. I don't know.

17 Q. Am I correct that in the *Led Zeppelin* case and *The Weeknd*  
18 case and the *Batts v. Adams* case, that in all three of those  
19 cases, Dr. Ferrara's opinions on liability were accepted over  
20 yours, isn't that correct?

21 A. That would seem to be correct.

22 Q. Were you in the room when Ed Townsend wrote *Let's Get It*  
23 *On*?

24 A. Um, of course not.

25 Q. And did you ever speak with Ed Townsend before he died

N4RsGRI1

Cross - Stewart

1 20 years ago?

2 A. No.

3 Q. While you have opined that you believe *Thinking Out Loud*  
4 copies certain elements from *Let's Get It On*, you've never  
5 spoken with Mr. Sheeran, have you?

6 A. No.

7 Q. You've never spoken with Amy Wadge either, his cowriter,  
8 have you?

9 A. No.

10 Q. You certainly weren't in the room when they created  
11 *Thinking Out Loud*, correct?

12 A. No.

13 Q. You testified earlier that you're not here today to offer  
14 an opinion on whether or not *Thinking Out Loud* infringes *Let's*  
15 *Get It On*, correct?

16 A. That's not my role.

17 Q. In fact, you can't offer that kind of opinion, correct?

18 A. That's correct.

19 Q. Nor can you testify as to whether any parts are distinctive  
20 or unique, correct?

21 A. Independently the parts, I'm not permitted to say, but I  
22 think --

23 Q. We'll disagree about the last part.

24 A. Um-hmm.

25 Q. How much are you being paid for your testimony today?

N4RsGRI1

Redirect - Stewart

1 A. You mean per hour or?

2 Q. Sure?

3 A. Total or what?

4 Q. However you want to answer the question.

5 A. My standard rates, which are significantly lower than many  
6 musicologists, especially Dr. Ferrara's, are 275 an hour is my  
7 standard rate.

8 MS. FARKAS: Your Honor, if I could just have a minute  
9 to confer, I may be done. I think just one more question just  
10 to clarify.

11 Q. When the cases we talked about where the court accepted  
12 Dr. Ferrara's opinions over yours -- it was the *Led Zeppelin*  
13 case *The Weeknd* case, and the *Batts* case -- in all of those  
14 cases you testified on behalf of the plaintiffs, correct?

15 A. Yes, but I offered -- I have often worked for the defense  
16 as well.

17 MS. FARKAS: Thank you. No further questions.

18 THE WITNESS: Yeah.

19 MR. FRANK: Redirect, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. FRANK:

22 Q. Dr. Stewart, yesterday you were asked quite a bit about an  
23 issue of, I guess, for lack of a better term, a note that you  
24 got wrong, I think it was at the beginning of your testimony.

25 Do you remember that?

N4RsGRI1

Redirect - Stewart

1 A. Oh, it was about the chord symbol that was on the report on  
2 the declaration, yes.

3 Q. Do you remember when you were originally did that  
4 transcription?

5 A. The year, I think it was 2017 or 2018.

6 Q. OK. How many transcriptions do you believe that you put  
7 together in this case over the last eight years?

8 A. Countless. My laptop has got dozens, maybe even hundreds.

9 Q. Presumably all these transcriptions contain quite a few  
10 notes, quite a few chords, quite a few other musical --

11 A. Yeah. Some are very small, they are just, you know,  
12 intended to be an example that you can paste into a report.  
13 Others are more lengthy, like a score for the entire piece of  
14 music.

15 Q. So I think if I understand you correctly, eight years ago  
16 you got a note wrong in one transcription, is that fair?

17 A. Well, I wouldn't say that. I mean, it's a chord symbol  
18 that they were stressing did not -- did not -- was inconsistent  
19 with the chord symbols that I was using in the later in the  
20 case, yeah. Basically, the second chord being D major over F  
21 sharp or F sharp minor, really a trivial difference dealing  
22 just with one pitch.

23 Q. All right. And that was on the 2017 transcription that you  
24 did, you got one symbol wrong?

25 A. I guess you could put it that way, yeah.

N4RsGRI1

Redirect - Stewart

1 Q. Now, you were asked quite a bit about the sheet music for  
2 *Thinking Out Loud*.

3 And if we could, could we put that back up? That's  
4 the Joint Exhibit 4.

5 I apologize, Ms. Farkas.

6 Now, if you could explain for the court and the jury,  
7 what exactly is this sheet music?

8 A. It's an arrangement --

9 MS. FARKAS: Objection, lacks foundation.

10 THE COURT: Overruled.

11 Q. Can you explain what this is?

12 A. It's an arrangement of *Thinking Out Loud* that was prepared  
13 in order to sell to the public and these are issued in various  
14 forms. Some come in lead sheets, you can download these from  
15 Music Notes. You can see at the bottom Musicnotes.com. This  
16 is where I download sheet music as well. Often they offer it  
17 in several different formats, meaning a lead sheet or guitar  
18 tablature. This is a piano arrangement, so it's not intended  
19 to be an exact representation at all of what is on the  
20 recording.

21 Q. When you use the word the term to be clear tablature,  
22 guitar tablature, what is that?

23 A. It's a way of representing the music without using notes,  
24 and so guitar players often, if they don't read music, then  
25 they would use tablature because it indicates where on the neck



N4RsGRI1

Redirect - Stewart

1 you play the notes.

2 Q. Above the staff at the beginning, at the beginning of the  
3 song *Thinking Out Loud*, up there it's got the notes I believe.

4 That's delineates the notes, correct?

5 A. Yeah. If what you're getting at is the tablature at the  
6 top giving the chord symbols, that is showing how to finger the  
7 chords.

8 Q. Would that be demonstrated how to finger the chords on the  
9 guitar?

10 A. Yes.

11 Q. OK. So those presumably those chord patterns that show  
12 strings and where the fingers go over the threads, correct?

13 A. Exactly.

14 Q. So this would be useful presumably to someone who can't  
15 read music, they are given a specific placing of the fingers?

16 A. Yes.

17 Q. Is this type of sheet music what is affectionately referred  
18 to as guitar fake book or something of that nature?

19 A. I'm sorry. I don't understand.

20 Q. Have you ever heard the term fake book?

21 A. Yes.

22 Q. Would this fit the bill for what a fake book is?

23 A. Not really, no, because a fake book is usually more  
24 minimal. It has the chords -- the chords and the melody and  
25 the lyrics and usually nothing else.

N4RsGRI1

Redirect - Stewart

1 Q. Would this -- but this particular sheet music would be  
2 commercially available to people who wanted to maybe play the  
3 song themselves either on guitar or piano?

4 A. Right.

5 Q. Does this sheet music conform with the actual  
6 transcriptions that you did for *Thinking Out Loud*?

7 A. It does not conform with my transcriptions, nor their  
8 expert's transcriptions.

9 Q. Is this sheet music, this commercially available sheet  
10 music for people, is it an accurate depiction of the actual  
11 sound recording of *Thinking Out Loud*?

12 A. Absolutely not.

13 Q. OK. How close is it?

14 A. Well, there is no piano in the first 24 seconds of *Thinking*  
15 *Out Loud*, there's just guitar. And those are not the pitches  
16 that are being played on the guitar.

17 So, again, it's an arrangement. It's for different  
18 instruments, and I think no one would pretend that it's a  
19 transcription of the recording. That's not what it is intended  
20 to be. It's intended to be something that people can play.

21 Q. During the course of your engagement in this case going  
22 back to, I think it was, 2015, have you ever had occasion to  
23 analyze this commercially available sheet music for *Thinking*  
24 *Out Loud*?

25 A. Yes.

N4RsGRI1

Redirect - Stewart

1 Q. You did? OK.

2 Was it relevant to your analysis at all?

3 A. I think it was something that provided another perspective  
4 on the composition. But in terms of the music examples that I  
5 would cite in my reports, I wouldn't use it.

6 Q. But as far as this case goes and what you were engaged to  
7 analyze, you were engaged to analyze the sound recording,  
8 correct?

9 A. Yes.

10 Q. So --

11 A. That's the composition as I understand it, in terms of  
12 *Thinking Out Loud*.

13 Q. Right. So other than giving you, perhaps, a different  
14 perspective, this sheet music really isn't material to any of  
15 the issues that you were asked to analyze?

16 MS. FARKAS: Objection, your Honor. I would just ask  
17 that the leading stop.

18 MR. FRANK: I'll rephrase the question.

19 Q. Is this sheet music relevant, other than the perspective  
20 you said, is it relevant to your analysis at all?

21 A. No --

22 MS. FARKAS: Objection, leading.

23 A. -- not a bit.

24 THE COURT: Sustained.

25 MR. FRANK: If we could go to, I think it was, slide

N4RsGRI1

Redirect - Stewart

1 67.

2 THE COURT: The jury will regard the last three  
3 questions asked by Mr. Frank as being testimony by Mr. Frank  
4 and utterly useless. Pay no attention to it.

5 BY MR. FRANK:

6 Q. Dr. Stewart, do you recall being asked about this earlier?

7 A. Yes.

8 Q. I wanted to be clear because it wasn't abundantly clear.  
9 How many pitch sequence are actually in common here?

10 It didn't seem as if we had an accurate number when  
11 you were asked before. Can you add them up and tell us how  
12 many?

13 A. Well, in *Thinking Out Loud*, you have one, two, three, four,  
14 five, six, seven, eight pitches out of 11.

15 Q. So, and what as far as the similarity in the pitches  
16 between *Let's Get It On* and *Thinking Out Loud*, how many are  
17 there?

18 A. There are eight in *Thinking Out Loud*.

19 Q. What are the common pitches between the two songs?

20 A. Three five, four four, three three, and two three.

21 Q. Do you know how many that is that they have in common?

22 A. Eight.

23 Q. OK. Thank you.

24 A. Eight out of 11.

25 Q. Eight out of 11?

N4RsGRI1

Redirect - Stewart

1 A. Yeah. And then this phrase in -- this is just looking at  
2 the first phrase of the chorus, there are three phrases that  
3 follow this, that follow a similar -- similar pattern. So it's  
4 really the bulk of the chorus.

5 Q. OK. Thank you.

6 You were shown, do you recall, a short while ago you  
7 were shown a video called Axis of Awesome?

8 A. Yes.

9 Q. The songs that were shown, the songs that were shown by  
10 that video or depicted in that video, are you familiar with any  
11 of those songs?

12 A. Not all of them. There were a lot.

13 Q. Do the ones that you're familiar with, do you know one way  
14 or the other whether those songs don't have copyright  
15 protection?

16 A. I would assume they all do.

17 Q. Thank you.

18 You didn't see *Let's Get It On* or *Thinking Out Loud*  
19 depicted on that video, did you?

20 A. No.

21 Q. Dr. Stewart, with respect to the sound recording of  
22 *Thinking Out Loud*, you were -- strike that.

23 Did you compare the Deposit Copy, attendant to your  
24 analysis, did you compare the Deposit Copy of *Let's Get It On*  
25 to the sound recording of *Thinking Out Loud*?

N4RsGRI1

Redirect - Stewart

1 A. Yes.

2 Q. And that was what you were hired to do?

3 A. No.

4 Q. What were you hired to do?

5 MS. FARKAS: Objection, your Honor.

6 A. Just --

7 Q. That's what -- that's the presentation you gave yesterday,  
8 based on that analysis, the Deposit Copy and the sound  
9 recording.

10 A. I'm sorry. Could you clarify what you're asking?

11 Q. Your testimony yesterday that you gave in direct, was it  
12 based on a comparison between the Deposit Copy of *Let's Get It*  
13 *On* and the sound recording of *Thinking Out Loud*?

14 A. Not initially.

15 Q. Yesterday, your testimony?

16 A. Oh, yesterday, it was all 100 percent based on the Deposit  
17 Copy.

18 Q. Thank you.

19 To be clear, the AI-generated recording that you  
20 played during the presentation, did you create that?

21 A. No. That was created by the defense.

22 Q. OK.

23 A. So we had nothing to do with that.

24 Q. Now, what is the selection and arrangement of common  
25 elements from *Let's Get It On* that were taken by *Thinking Out*

N4RsGRI1

Redirect - Stewart

1     *Loud?*

2             MS. FARKAS:  Objection, calls for a legal conclusion.

3             THE COURT:  Sustained.

4     Q.  What common elements combined together were taken from  
5     *Let's Get It On by Thinking Out Loud?*

6             MS. FARKAS:  Same objection, but...

7     A.  The configurations I've identified --

8             MR. FRANK:  Wait for the judge to rule.  I'm sorry.

9             We respectfully submit it is not a legal conclusion.

10    He was called here to testify --

11            THE COURT:  The objection is sustained.

12            MR. FRANK:  OK, I see.

13    BY MR. FRANK:

14    Q.  What common elements of *Let's Get It On* appear -- what  
15    combination of common elements from *Let's Get It On* appear in  
16    *Thinking Out Loud?*

17            MS. FARKAS:  Objection, your Honor.

18            He's trying to be creative, but it's all seeking a  
19    legal conclusion here that this witness is not competent to  
20    testify about.

21            THE COURT:  Well, his purpose is not to be ruled on  
22    and the question is nevertheless a different question and  
23    itself unobjectionable.

24            Overruled.

25    Q.  Dr. Stewart, could you respond to my last question?

N4RsGRI1

Redirect - Stewart

1 A. Could you repeat it, please?

2 Q. What combination of common elements from *Thinking Out Loud*  
3 appear -- I'm sorry.

4 What combination of common elements from *Let's Get It*  
5 *On* appear in *Thinking Out Loud*?

6 A. The melodic figurations that I have identified, the  
7 harmonic sequence of chords, the four chords, and then the  
8 anticipation of the second and the fourth chord.

9 Q. So those three common elements?

10 A. Yes.

11 Q. And in addition to that, do you have an opinion as to how  
12 many melodies from *Thinking Out Loud* appear -- I'm sorry --  
13 from *Let's Get It On* appear in *Thinking Out Loud*?

14 A. Three.

15 Q. Thank you.

16 Dr. Stewart, you were asked about your scholarly  
17 writing.

18 You mentioned something about something that is  
19 imminent that is going to be published. Could you describe  
20 that or identify that?

21 A. Yes. Oxford University Press is putting out a book on  
22 protest music, and I contributed a chapter to this peer-  
23 reviewed book and I've been waiting for it to come out now for  
24 a little while. I'm not sure what the delay is, but I'm told,  
25 you know, the contracts have been signed and hopefully it will



N4RsGRI1

Redirect - Stewart

1 be out any time now. As far as I know, it's complete. My  
2 chapter is on protest music in Mexico.

3 Q. With respect to other aspects of your scholarship, have you  
4 spoken or attended any conventions or given any reports?

5 A. I regularly attend all -- well, I have attended all of the  
6 major scholarly organizations, such as the Society for music  
7 Theory, the American Musicological Society, the Society for  
8 Ethnomusicology, the Society for American Music, SAM, and I've  
9 presented at all of these.

10 I've presented at the Latin American Studies  
11 Association conference in Rio de Janeiro at the American  
12 Studies Conference, and these are all national or international  
13 conferences all the presentations are peer-reviewed.

14 So that's -- I'm a regular attendee. I go to at least  
15 one a year, sometimes more. It's kind of expensive to pay all  
16 the fees connected with registering for the concerts, the  
17 travel, the hotel. The university covers some of that, but I  
18 try to keep abreast of all of the developments in the field.

19 I think that's really important. every time I go, I  
20 learn a lot about contemporary research and scholarship, and  
21 that informs my work. And I consider it essential in my role  
22 as a research or a scholar, a teacher, to maintain that  
23 activity.

24 Q. When was the last time -- when would have been the last  
25 time you went to one of these?

N4RsGRI1

Redirect - Stewart

1 A. Um, just this last fall. It was a joint conference of  
2 three of the major societies.

3 Q. What was the presentation that you gave?

4 A. I didn't give one that one. The one I last presented at  
5 was Minneapolis 2000, and that was a special panel on forensic  
6 musicology, and it's role in determination of substantial  
7 similarity in music copyright litigation.

8 Q. All right. You mentioned the term peer-reviewed.

9 What, if any, significance do you attach to that?

10 A. That's important because that is -- that means that your  
11 peers have looked at your work and evaluated it and determined  
12 that it is worthy of being presented at these conferences.

13 Q. All right.

14 A. So peer review is kind of a way of trying to make sure that  
15 the discourse is at a high-enough level.

16 Q. And within the context of your work as a musicologist, have  
17 you ever heard -- are you familiar with the premise that there  
18 are only 12 notes which limits creativity?

19 A. I am, indeed.

20 Q. Do you have an opinion one way or the other as to that  
21 premise?

22 MS. FARKAS: Your Honor, I think we're getting outside  
23 the scope of cross here.

24 THE COURT: Sustained.

25 MR. FRANK: Dr. Stewart, I think that's all I have.

N4RsGRI1

Recross - Stewart

1 Thank you.

2 Hold on one moment.

3 (Counsel confer)

4 That's all I have, Dr. Stewart. Thank you.

5 MS. FARKAS: I just have very quick few additional  
6 questions.

7 RECROSS EXAMINATION

8 BY MS. FARKAS:

9 Q. I would like to put slide 67, your slide 67 back on the  
10 screen.

11 So focusing on the pitch sequence that you have  
12 charted for these melody segments, is it your testimony that  
13 eight of the pitches line up?

14 That's what you testified. Are you sticking with that  
15 testimony, Dr. Stewart?

16 A. Were those my exact words?

17 Q. I believe so.

18 A. Well, I meant that they match.

19 Q. Meaning that there are fours in both melodic segments, they  
20 both have fours and they both have these and they both have  
21 twos somewhere?

22 A. And think are in similar sequence, yes.

23 Q. So it's your testimony that the third and fourth note of  
24 *Let's Get It On* matches the third and fourth note of *Thinking*  
25 *Out Loud*; that's your testimony, you have it in red?

N4RsGRI1

Recross - Stewart

1 A. No, I didn't say that at all. I said that the ones in red  
2 match.

3 Q. Well, how does it match?

4 How does the four four match the five five?

5 A. Well, because they both go from five to four. This is  
6 standard in terms of pitch analysis. There's nothing unusual  
7 about this, the sequence analysis.

8 Q. OK. But they don't line up in terms of the actual sequence  
9 of pitches. The third and fourth note of *Let's Get It On* is  
10 four four and the third and fourth note of *Thinking Out Loud* is  
11 five five, correct?

12 A. No, I disagree with the way you're saying that. I don't  
13 think that --

14 Q. The third -- I'm sorry.

15 The third and fourth note of *Thinking Out Loud* is not  
16 five five. Do you want to change your transcriptions?

17 A. Well, you're covering up the transcription.

18 Q. Well, let's let you take a look.

19 A. So what I'm trying to say is that rhythmically they don't  
20 line up exactly and -- but in terms of the actual pitch  
21 sequence, I think that it's fairly represented, what's there.

22 Q. OK. And so the sixth, the fifth, and sixth note you have  
23 three three in *Let's Get It On* and underneath it is four four  
24 in *Thinking Out Loud*, but yet you made those red, too, right?

25 Those are not the same pitches, are they?

N4RsGRI1

Recross - Stewart

1 A. Because they both go after the five, they both go to four.  
2 This is standard procedure.

3 Q. Well, actually it goes from five to four in *Thinking Out*  
4 *Loud* and it goes from four to three in *Let's Get It On*, right?

5 A. What I've done here is standard in terms of looking at the  
6 pitch sequences and the fact that there is a few extra -- two  
7 extra fives and one extra four does not change the similarity  
8 in the pitch sequence.

9 It's just a question of the repetition of the notes  
10 there. It doesn't throw off the entire pitch sequence  
11 analysis.

12 Q. OK. So no matter what the notes are, if they repeat, they  
13 are going to be red for you, yeah?

14 A. Not at all.

15 Q. OK. And this transcription also, just to include that  
16 grace note as the first three pitch that we talked about  
17 earlier, correct?

18 A. Because it's a different pitch. It's a different  
19 introture. It's a different -- you know, we talked about scale  
20 degrees. It's a different scale degree.

21 Q. Right. But that's the grace note that is not in the  
22 published sheet music of *Thinking Out Loud*, correct?

23 A. Which is -- yes, it's not in it, which is not a  
24 representation of the recording.

25 Q. Well, we'll see about that.

N4RsGRI1

Recross - Stewart

1 A. Well, it's a fact.

2 Q. It just so happens that when you put the three pitch in, as  
3 the grace note into your charting, then it lines up with that  
4 first three pitch of *Let's Get It On*, correct; they are both  
5 threes, yes?

6 A. Yes, um-hmm.

7 MS. FARKAS: No further questions.

8 MR. FRANK: Your Honor, at this time we would like to  
9 move into evidence Dr. Stewart's report, which is listed at  
10 Exhibit 102, by the plaintiff's, as well as his slides from  
11 yesterday, minus the ones that were excluded by the court.

12 MS. FARKAS: Objection, your Honor.

13 His report is hearsay and it is entirely based on --  
14 it is not based on the Deposit Copy. It's based on the sound  
15 recording of *Let's Get It On*.

16 THE COURT: We have his testimony at great length and  
17 under some controls which were not applicable to the report. I  
18 think we will not take the report into evidence.

19 MR. FRANK: Yes, your Honor.

20 May we move the slides into evidence, minus the three  
21 that were excluded by the court yesterday?

22 MR. GOLDSMITH: Objection, your Honor. The  
23 demonstratives are specifically for the purpose of  
24 demonstration of testimony. They are not substantive exhibits  
25 to be admitted into evidence.

N4RsGRI1

Recross - Stewart

1 THE COURT: No. The objection is sustained.

2 MR. FRANK: Yes, your Honor. Thank you.

3 (Counsel confer)

4 Yes, your Honor.

5 THE COURT: I think it's time to adjourn for lunch.

6 We'll resume at 2:15 for the last afternoon of the week.

7 (Witness excused)

8 (Luncheon recess)

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N4RsGRI2

Direct - Camp

## AFTERNOON SESSION

2:20 p.m.

(Jury not present)

THE COURT: Was there something you wanted to do  
before the jury comes in?

MS. ZAKARIN: Your Honor, Mr. Frank hasn't rested yet,  
so what I wanted to address --

THE COURT: Wait. Are you resting or sleeping?

MR. CRUMP: No. We haven't rested, your Honor.

THE COURT: Then we'll have the jury.

(Jury present)

MR. CRUMP: May it please the court, your Honor.

Plaintiffs call Mr. Stuart Camp to the witness stand.

THE DEPUTY CLERK: Please stand and raise your right  
hand.

STUART CAMP,

called as a witness by the Plaintiffs,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: Please state your full name and  
spell it.

THE WITNESS: It's Stuart Camp, S-t-u-a-r-t C-a-m-p.

## DIRECT EXAMINATION

BY MR. CRUMP:

Q. Mr. Camp.

A. Hello.



N4RsGRI2

Direct - Camp

1 Q. Could you tell the jury who you work for?

2 A. I work for myself. I run a music management company.

3 Q. In this particular case, do you have an artist that you  
4 manage?

5 A. Yes. I manage Ed Sheeran.

6 Q. Can you tell the juror what things you do for Ed Sheeran?

7 A. As a manager of a musician, you kind of oversee and look  
8 after all sort of professional aspects of their career.

9 Q. Do you promote his career?

10 A. Yes.

11 Q. Do you protect his career?

12 A. Yes.

13 Q. Do you help protect his copyrights?

14 A. One of my -- we have a record label. We have publishers  
15 that look after the rights. I have relationships with those.

16 Q. Do you help protect his brand?

17 A. Yes.

18 Q. How long have you been working with Mr. Sheeran?

19 A. About 12, 13 years.

20 Q. Mr. Camp, did you have e-mail exchange about a conflict  
21 Sony had with Jobete Records?

22 A. Not to my knowledge. I can't recall one.

23 Q. So you don't remember having an e-mail exchange on  
24 March 21, 2015 with Jim Doyle about Sony/ATV having a conflict  
25 with Jobete Publishing?

N4RsGRI2

Direct - Camp

1 A. I don't. I probably had an e-mail conversation with Jim  
2 Doyle. I don't remember the Jobete element, no.

3 Q. OK. Would you have any reason to not believe you and  
4 Jim Doyle had a conversation about that conflict?

5 A. No reason not to believe, I just honestly can't recall it.

6 Q. All right. I want to show you your e-mail between you and  
7 Mr. Doyle and see if you recall this, and if I could have the  
8 page.

9 Do you see the second sentence there?

10 A. Yeah.

11 Q. Can you read that second sentence?

12 A. I think we need to tread carefully and take advice before  
13 we do anything. I want to get Sony/ATV out of the way first  
14 with the settlement, as I believe they have a conflict with  
15 Jobete.

16 Q. So, in fact, back in March of 2015, you were talking about  
17 the conflicts between Sony and Jobete Publishing, correct?

18 A. That appears so, yes.

19 Q. OK. Now, can you tell the jury who manages your client Ed  
20 Sheeran's catalog?

21 A. For records, it's Atlantic Records U.K. For publishing  
22 it's Sony/ATV for his share of record rights and songs.

23 Q. Did you come to find out that a Motown legendary artist  
24 wrote publishings for Jobete Publishings?

25 A. To be perfectly honest with you, sir, I probably didn't

N4RsGRI2

Direct - Camp

1 acknowledge the name of the publishers at the time.

2 Q. But you knew that Sony also managed Motown --

3 A. We were aware there was a Sony -- there was a conflict with  
4 Sony, yes.

5 Q. They managed Marvin Gaye's publishing?

6 A. Um-hmm.

7 Q. You were aware of that?

8 A. I wasn't personally, no.

9 Q. You were not aware of that?

10 A. No.

11 Q. When you were sending e-mails with Jim Doyle, you weren't  
12 aware of that Motown Publishing was --

13 A. I would imagine this would have been the first time I was  
14 really made aware of that conflict.

15 Q. Were you aware that Ed Townsend's estate was managed, also  
16 catalog publishing, was managed by Sony?

17 A. We were ultimately made aware of that, yes. We knew there  
18 was issues.

19 Q. And you all were talking about it back on March 21, 2015,  
20 correct?

21 A. That's what it says here, yes.

22 Q. OK. Now, as his business manager you acknowledge that  
23 Sony/ATV manages his catalog, correct?

24 A. For publishing, yes.

25 Q. For publishing.

N4RsGRI2

Direct - Camp

1 And that means they own all his copyrights, correct?

2 A. Not all copyrights. It's a share of the songwriting  
3 royalties. The recordings are owned by Atlantic Records.

4 Q. So Sony gets money from managing that catalog, correct?

5 A. Correct.

6 Q. That means they go out and they collect for Ed Sheeran?

7 A. Correct.

8 Q. They go out and make sure somebody needs a license for  
9 Ed Sheeran, that they manage it?

10 A. They manage it in consultation with myself and my other  
11 business partners.

12 Q. OK. And Atlantic Records, who is Atlantic Records?

13 A. Atlantic Records is a record label that we are signed to in  
14 the U.K.

15 Q. OK. And you understand what a copyright is, correct?

16 A. Of course.

17 Q. I'm sorry?

18 A. Yes.

19 Q. And do you understand copyrights are important, correct?

20 A. Yes.

21 Q. Because copyrights are very valuable, correct?

22 A. Yes.

23 Q. Now, Mr. Camp, do you understand that copyrights from all  
24 artists are valuable, correct?

25 A. Of course.

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Direct - Camp

1 Q. Ed Sheeran's copyrights are valuable, Marvin Gaye's  
2 copyrights are valuable, correct?

3 A. Correct.

4 Q. And Ed Townsend's copyrights are valuable, correct.

5 A. Correct.

6 Q. In fact, Sony and Jim Doyle talked about there being a  
7 conflict that in 2015 was them having all these rights to  
8 oversee?

9 Is that a yes?

10 A. Yes.

11 Q. OK. Thank you.

12 And, in fact, you know, there have been a lot --

13 Let me ask a question. If copyrights weren't so  
14 valuable, why would Sony be getting paid to license those  
15 copyrights?

16 MS. ZAKARIN: Objection.

17 MR. CRUMP: Your Honor, he said he was in the music  
18 business and helped manage Ed Sheeran's copyrights.

19 THE COURT: What's the objection, Mr. Zakarin?

20 MS. ZAKARIN: There are plenty of copyrights not  
21 valuable. It has nothing to do with the value of the  
22 copyrights.

23 THE COURT: Mr. Crump, I'm going to ask you to wait.  
24 Give me a chance to rule on objections. Don't just go on  
25 taking testimony from the witness. This came up yesterday, I

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1 think.

2 MR. CRUMP: Yes, sir, your Honor.

3 THE COURT: All right. Mr. Zakarin.

4 MS. ZAKARIN: Yes, your Honor.

5 THE COURT: What's the objection?

6 MS. ZAKARIN: The objection is the question was if  
7 copyrights are -- if copyrights weren't so valuable, why would  
8 Sony get paid to license. Sony gets paid to license under  
9 agreements. The question is irrelevant.

10 THE COURT: What is the objection?

11 MS. ZAKARIN: It has no foundation, your Honor.

12 THE COURT: Excuse me?

13 MS. ZAKARIN: It has no foundation for the question.

14 THE COURT: It has no foundation. Well, I think it's  
15 argumentative and speculative, and I'm granting upholding the  
16 objection on those grounds.

17 Bring it into this world or their world and they will  
18 know what you're talking about.

19 MR. CRUMP: I certainly will, your Honor. I may need  
20 direction from the court, when they do speaking objections, and  
21 I can't respond --

22 THE COURT: Are you calling this man as a hostile  
23 witness?

24 MR. CRUMP: Yes, sir, your Honor.

25 THE COURT: I see. I thought you were.

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1 MR. CRUMP: Thank you, your Honor.

2 BY MR. CRUMP:

3 Q. Sony licensed *Let's Get It On* to Applebee's to sell here in  
4 America. Based on what you know about copyright, do you think  
5 they did that for free?

6 A. I couldn't possibly comment on what Sony's deal was.

7 Q. Based on you being a business manager, would you license  
8 and let an American restaurant chain use Ed Townsend selling  
9 their commercials for free?

10 MS. ZAKARIN: Objection, your Honor. I don't know  
11 what this has to do with infringement.

12 THE COURT: Sustained.

13 MR. CRUMP: May I be heard, your Honor?

14 THE COURT: Speculative.

15 MR. CRUMP: OK.

16 Q. Are you aware of what copyright infringement is?

17 A. Correct.

18 Q. You understand what infringers are?

19 A. Yes.

20 Q. In fact, part of your job is to protect brands of your  
21 artist, correct?

22 A. Correct.

23 Q. And had that ever been an issue with any of your artists  
24 being called infringers?

25 MS. ZAKARIN: Objection.

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1 THE COURT: Sustained as to form.

2 MR. CRUMP: Yes, sir, your Honor.

3 Q. As we sit in this court, have you ever had to deal with an  
4 issue of Mr. Sheeran being called an infringer on the Internet?

5 MS. ZAKARIN: Your Honor, this has been ruled upon by  
6 your Honor and Mr. Crump is going into something your Honor has  
7 long ago ruled is out of bounds.

8 MR. CRUMP: Can I be heard, your Honor?

9 THE COURT: Sustained.

10 You can be heard. It might be better for you to be  
11 heard at the sidebar.

12 MR. CRUMP: OK.

13 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: Mr. Zakarin, remind me of the Internet  
3 situation.

4 MS. ZAKARIN: Let's see.

5 THE COURT: Speak into this.

6 MS. ZAKARIN: I will, your Honor.

7 Your Honor, I'm going to hand you the order that  
8 issued because, your Honor -- I'll wait until you read it.

9 MR. CRUMP: Your Honor, this is a copyright  
10 infringement case.

11 THE COURT: It was until it turned into an estate  
12 management. Then it became a surrogate's court at issue.

13 MR. CRUMP: Yes, sir, because the defendants who are  
14 named have those issues that they are dealing with, namely  
15 Sony.

16 But, your Honor, he stated that he was the manager,  
17 that he was aware, part of his job was to promote and protect  
18 Ed Sheeran's band, and he had been doing it for 15 years. And  
19 the only thing I was trying to establish with this witness is  
20 this infringement issue because it came up in e-mails with him  
21 and talking specifically about the *Let's Get It On* song, Judge.

22 This was a specific thing. He even sent e-mails to  
23 his client about it.

24 THE COURT: If you had the e-mails mentioning *Let's*  
25 *Get It On*, show them to me and Mr. Zakarin and maybe they are

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1 proper for inquiry in this case.

2 MR. CRUMP: I will.

3 MS. ZAKARIN: That's fine, your Honor.

4 Let me just note though they've called him on their  
5 case. They may be calling him a hostile witness, but it's not  
6 cross-examination. It's their case.

7 THE COURT: I'm sorry. You can call a hostile  
8 witness.

9 MS. ZAKARIN: I know, but they haven't identified in  
10 their direct examination, their list of exhibits, any of these  
11 documents they are now talking about.

12 THE COURT: Let's see the documents.

13 MS. ZAKARIN: I agree, your Honor.

14 MR. CRUMP: Your Honor, for the record, the documents  
15 are e-mails from him and to him.

16 THE COURT: Let's see them.

17 MR. CRUMP: Yes, sir, your Honor.

18 MS. ZAKARIN: Thank you, your Honor.

19 (Pause)

20 Do you want this back, your Honor?

21 It is number three.

22 THE COURT: Yes. I'll try and see what the dispute  
23 underlying dispute is.

24 MS. ZAKARIN: I'm anxious to find out myself.

25 Do you have a set for me?

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Direct - Camp

1 MR. CRUMP: You can look on from me.

2 MS. ZAKARIN: I would rather have them for myself.

3 MR. CRUMP: You have it.

4 MS. ZAKARIN: I understand, but surprising I haven't  
5 memorized everything.

6 All right. Let me see.

7 MR. CRUMP: Your Honor, I will keep my questions  
8 specific only to things that he said involving this matter.

9 THE COURT: Show them to me.

10 MR. CRUMP: OK. Yes, sir.

11 I may switch up, Judge, just a little bit here. This  
12 is what I was questioning on.

13 MS. ZAKARIN: I don't know what this has to do with  
14 this case.

15 THE COURT: It's probably more for you to look at  
16 these than me.

17 MS. ZAKARIN: Yes, sir, your Honor.

18 MR. CRUMP: I have some highlighted things here.

19 (Pause)

20 THE COURT: Seems to me that the underlying briefing  
21 with respect to that in limine application seems to involve a  
22 prior claim of infringement by Sheeran.

23 MR. CRUMP: And, Judge, I won't -- I won't talk about  
24 any infringement anymore. I want -- my goal with this witness  
25 is simply to talk about when they knew about *Let's Get It On*

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1 and *Thinking Out Loud* was an issue, the things that Sony did to  
2 marginalize the claim, the fact that they knew about this video  
3 in January of 2015, the one that has become a focus, and that  
4 they even said Ed, during his video, was an issue. They said  
5 it.

6 THE COURT: We'll get to that.

7 MR. CRUMP: Yes, sir.

8 MS. ZAKARIN: Your Honor.

9 THE COURT: But just that. That's all.

10 MR. CRUMP: Well, Judge.

11 THE COURT: What's the subject matter?

12 Never mind about the fiduciary duties or anything else  
13 like that.

14 MR. CRUMP: So let me say only to that, Judge, Sony is  
15 a defendant, and I do believe a big part of our case is Sony  
16 has a conflict because they were supposed to protect the  
17 copyright infringement interests -- the copyright interests of  
18 Ed Townsend's estate and they didn't do that.

19 MS. ZAKARIN: If I can, your Honor.

20 THE COURT: Let's first establish what the subject of  
21 this inquiry is. This one in 2015, seven years ago, eight  
22 years ago.

23 MR. CRUMP: Well, what he was doing then, they were  
24 trying to squash this.

25 MS. ZAKARIN: Your Honor, if I can on this?

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1 THE COURT: Yes.

2 MS. ZAKARIN: What seems to be coming up here is a  
3 claim that Sony did not fairly treat Mr. Townsend --

4 THE COURT: Yes.

5 MS. ZAKARIN: -- or his estate, which has nothing to  
6 do with whether there is or is not an infringement. And there  
7 is no claim anyplace in this case that Sony laid back on its  
8 ores. What is here is Sony had a musicologist look at it and  
9 said there is no claim, and Sony said since there is no claim,  
10 they couldn't possibly do something to pursue a claim, and they  
11 did what they did. That's shown there.

12 What they are trying to show is that somehow Sony did  
13 something wrong. But that still doesn't relate to whether  
14 there was an infringement.

15 THE COURT: They did nothing when they should have  
16 done nothing.

17 MR. CRUMP: Exactly.

18 MS. ZAKARIN: They did do something. But even if they  
19 did do nothing, which is not true, they did two independent  
20 musicologists.

21 THE COURT: Is there any reference to this in the  
22 complaint in this action?

23 MS. ZAKARIN: No.

24 MR. CRUMP: But credibility is always an issue and --

25 THE COURT: Whose credibility?

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1 MR. CRUMP: The defendant's. Every defendants'  
2 credibility is at issue. And what Sony did, your Honor, then I  
3 will shut up and follow the court's ruling.

4 THE COURT: We are not receiving this on that issue.

5 MR. CRUMP: It's not just on credibility. It's the  
6 fact that Sony did have the duty to deal with telling them  
7 whether or not we know in these e-mails it shows from the  
8 beginning, they were worried about trying to marginalize the  
9 Gaye and the Townsend claims, the very claims that we're here  
10 today.

11 It is critically important that --

12 THE COURT: On the contrary, it's too remote

13 We are litigating a copyright infringement claim, not  
14 one of a state administration or the conduct of a prior  
15 discussion seven years ago. It is not part of the claim in  
16 this case. It's not in the complaint.

17 MR. CRUMP: OK.

18 THE COURT: Is that accurate?

19 MS. ZAKARIN: Correct, your Honor.

20 MS. FARKAS: That's correct.

21 MS. ZAKARIN: It's not in the complaint anywhere, your  
22 Honor.

23 MR. CRUMP: OK. But I'll move on to other things.

24 THE COURT: I think you should move away from it.

25 MR. CRUMP: But, Judge, all I want to ask -- we hardly

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1 ever object and let them try their case. Every time we try to  
2 try our case, they object and keep saying we can't try our case  
3 how we want to try our case.

4 THE COURT: But this is not part of your case. The  
5 case in this court is defined by the complaint in this court,  
6 and it does not mention this as a claim. We're trying an  
7 infringement claim here, not one of state administration.

8 MR. CRUMP: Thank you.

9 THE COURT: Even if there is a similarity of motive.

10 MS. ZAKARIN: Is this yours?

11 It belongs to you. I think this one belongs to me and  
12 this is yours.

13 MS. FARKAS: I have a set.

14 MS. ZAKARIN: OK.

15 THE COURT: If there something you particularly want  
16 to show me, I'll look at it. But these are rulings that are  
17 sound and I'm making.

18 MR. CRUMP: You've given me direction, Judge. I  
19 understand it's about *Thinking Out Loud* and *Let's Get It On* and  
20 those issues between those two songs.

21 THE COURT: No, it's not. Those aren't the issues.

22 MR. CRUMP: OK.

23 THE COURT: The issue is, was there infringement by  
24 *Thinking Out Loud* of *Let's Get It On*. That's the issue. It  
25 has nothing to contribute to it.

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1 MR. CRUMP: Judge, even about the concert video that  
2 we have been talking about, he acknowledged in an e-mail that  
3 this is a problem. He acknowledged that in the e-mails.

4 THE COURT: We are not discussing it in this case, in  
5 this court.

6 MR. CRUMP: I'm talking about the video, Judge.

7 MS. ZAKARIN: They've played the video, we've seen the  
8 video, and the video is what it is of Ed Sheeran when he played  
9 *Thinking Out Loud* and went into *Let's Get It On*. They've shown  
10 it. They've shown it.

11 MR. CRUMP: I know we've seen it. Judge, I think it's  
12 only right that this jury know that Ed Sheeran and everybody  
13 knew that this was a problem and then they started talking  
14 about it amongst themselves.

15 MS. ZAKARIN: So what.

16 THE COURT: It's irrelevant to infringement.

17 MR. CRUMP: OK. Judge, let me ask all the questions  
18 then. If you're going to limit me, I want to at least proffer  
19 what I was going to ask him about then because also we were  
20 going to ask him about there is an issue about the creation of  
21 the song that they talk about in the e-mails.

22 MS. ZAKARIN: They've questioned -- they can question  
23 Mr. Sheeran. Mr. Camp was not there when --

24 THE COURT: What's the --

25 MS. ZAKARIN: -- when *Thinking Out Loud* was --



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Direct - Camp

1 THE COURT: What is the issue here in his papers  
2 about --

3 MS. ZAKARIN: Show it to me, too.

4 THE COURT: -- about the creation?

5 MR. CRUMP: Yes.

6 MS. ZAKARIN: Camp has no personal knowledge of the  
7 creation.

8 THE COURT: He's got a document here. All we want to  
9 see is what's in the document.

10 MS. ZAKARIN: I agree. Show me. I can't read that  
11 way anymore.

12 MR. CRUMP: I'll read it out to you. We will also  
13 need to counter the apparent online claim which I have not  
14 seen. That song was written at the request of Simon Cowell  
15 based on Marvin Gaye. And then you have conversations between  
16 Ed Sheeran and his manager saying, Ed, we have to deal with  
17 this issue that everybody is saying --

18 THE COURT: Well, I'll allow you to do this.

19 Number one is don't testify. Ask open questions, not  
20 leading questions. This is not a discovery dispute in your  
21 other claim.

22 Number two, you can ask him what song was referred to  
23 in that statement and what was the conversation in that  
24 statement.

25 MS. ZAKARIN: That's fine.

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1 MR. CRUMP: OK. Yes, sir. Thank you for the  
2 direction, Judge.

3 MS. ZAKARIN: That's fine, your Honor. Thank you,  
4 your Honor.

5 (Continued on next page)

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Direct - Camp

1 (In open court)

2 MR. CRUMP: If it may please the court.

3 BY MR. CRUMP:

4 Q. Mr. Camp, did you have any discussions with Mr. Sheeran  
5 about Simon Cowell talking about the creation of *Thinking Out*  
6 *Loud* in any way?

7 A. Not that I recall specifically. I know there was -- there  
8 was an insinuation about a Cowell conversation that came up  
9 relatively recently that I was made aware of, but I can't  
10 recall the conversation at all, no.

11 Q. Would it help you to look at your e-mail, if that refreshes  
12 your recollection?

13 A. Yeah, yeah.

14 MR. CRUMP: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 Q. Do you see that?

17 A. I do, yes.

18 Q. The date of April 2015?

19 A. Correct.

20 Q. And do you recall when *Thinking Out Loud* was released?

21 A. Um, on the album it was summer 14.

22 Q. OK. And could you read what is in the e-mail between you  
23 and Ed Sheeran?

24 A. Yeah. Yeah, that looks like a cut and paste from me.

25 Q. Mr. Camp?

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Direct - Camp

1 A. Yes.

2 Q. Could you read the e-mail?

3 A. I did read the e-mail, yes.

4 Q. OK. Could you read it aloud?

5 A. Starting from where? What you can see on the screen?

6 Q. Just that paragraph.

7 A. From our side, we do urgently need Ed and Amy to give us  
8 their written recollections with dates as to how the song came  
9 about. Clearly if Amy's interview last year is not correct,  
10 then we need to know sooner rather than later. We will also  
11 need to counter the apparent online claim, which I have not  
12 seen, that the song was written at the request of Simon Cowell  
13 based on Marvin Gaye.

14 Q. So this was an issue?

15 A. I think there was something that we were made aware of by  
16 our record label at the time. But this e-mail, also this text  
17 is not written by me. This is cut and pasted from someone  
18 else's e-mail, I believe.

19 Q. Let's talk about that then.

20 Who was that e-mail sent to you from?

21 A. I don't know. It may have been Jim Doyle or Ben Cook. I  
22 honestly couldn't recall.

23 Q. Who is Jim Doyle?

24 A. Jim Doyle is somebody who works as part of the management  
25 team.

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1 Q. Your management team?

2 A. Mine, amongst others.

3 Q. OK. Does he have interaction with people in the states?

4 A. Excuse me?

5 Q. Did he have also dealings with people in the United States?

6 A. We all have people with dealings with people everywhere.

7 Q. Were you talking about, just this particular paragraph,  
8 were you all talking with Sony/ATV as well as Warner Music  
9 about this?

10 A. I believe at the time this was the thirdhand conversation  
11 with me about, I think -- I think Atlantic reached out to Sony.  
12 I can't honestly recall, rather than it being a direct  
13 conversation.

14 Q. Had you all been made aware of any people from the estates  
15 of Marvin Gaye and Ed Sheeran -- I'm sorry -- Ed Townsend  
16 asking about the similarities between Ed Sheeran's *Thinking Out*  
17 *Loud* and Marvin Gaye's *Let's Get It On*?

18 A. Not -- not Ed Townsend. I believe there was a conversation  
19 with Ben Cook, who was the president of Atlantic Records at the  
20 time. Someone from the Gaye estate, I can't recall who, just  
21 asked if we ever looked at it.

22 Q. Was that Marvin Gaye III?

23 A. I couldn't -- I couldn't confirm, but, you know, it could  
24 have been. I don't know exactly who it was.

25 Q. Would seeing your e-mail refresh your recollection?

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Direct - Camp

1 A. Yeah, the whole one.

2 Q. Again, on that same document you have, sir?

3 A. Yeah, I'm just trying to ...

4 Q. At the beginning?

5 A. At the very beginning. I'm sorry.

6 MS. ZAKARIN: Your Honor, I'm just going to object on  
7 relevance grounds.

8 MR. CRUMP: Your Honor, I'll get back to the mic.

9 THE COURT: What are you objecting to on relevance  
10 grounds?

11 MS. ZAKARIN: The inquiry relating to e-mails about a  
12 claim after a claim was made. I don't know how it is relevant  
13 to the claim of infringement that we're litigating, that after  
14 a claim was made, there were communications that a claim was  
15 made.

16 THE COURT: Well, that's the problem, I think, in  
17 which he's trying to solve and that is if there is any  
18 connection between these materials and the issues in this case.  
19 And it may be that this witness's memory will explain whether  
20 there is or is not.

21 MS. ZAKARIN: Understand, your Honor.

22 I was just observing that maybe they will link it. At  
23 this point, I don't see the relevance, but I understand, your  
24 Honor.

25 BY MR. CRUMP:

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1 Q. Mr. Camp.

2 A. Yes.

3 Q. Do you see the first part of that e-mail between you and Ed  
4 Sheeran?

5 A. Correct, yes.

6 Q. And does that refresh your recollection about what's going  
7 on with you all becoming aware in early 2015 of the claims that  
8 Marvin Gaye estate has made?

9 A. I've read the original e-mail. It's not up on the screen  
10 yet and it has, yes.

11 Q. And what was that about? You said you read it?

12 A. That was -- that was Ben Cook who, like I said, was the  
13 head of Atlantic Records in the U.K., had a conversation with,  
14 as I said, Marvin Gaye III, and there had been an inquiry, was  
15 the way to put it, about whether we had anyone look at it.  
16 They thought there might be some similarities.

17 Q. And, Mr. Camp, as the manager of Ed Sheeran, did you all  
18 run the song for clearance to make sure that it had not copied  
19 similarities of other songs before you released it?

20 A. No.

21 Q. You didn't do that, correct?

22 A. No.

23 Q. And, in fact, is it correct to say that after this became  
24 an issue, you all started talking to Sony and others about we  
25 need to get a report?

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1 A. I think Sony did the reports on their own back, but that's  
2 normal. If there's an inquiry made, we think there may be a  
3 claim, it would be -- it would be prudent to check.

4 Q. You said you think Sony did that on their own?

5 A. I believe so. I think the initial reports were for Sony,  
6 yes.

7 Q. OK. So if I showed you your e-mail to refresh your  
8 recollection that you all were inquiring of Sony to do that,  
9 would that help you?

10 A. Maybe.

11 Q. OK. Let's go to -- I think it's D.

12 MS. ZAKARIN: Before something is posted on the  
13 screen, can I see what it is?

14 I don't know what documents he's even dealing with  
15 now.

16 MR. CRUMP: It's the documents you all produced, but I  
17 will give you what you all gave us.

18 MS. ZAKARIN: I know we produced it, I just don't know  
19 which one we produced you're using right this minute.

20 THE COURT: This is not in evidence at the moment, is  
21 it?

22 Please don't display things to the jury that are not  
23 in evidence.

24 MR. CRUMP: Yes, sir, your Honor. It is marked as a  
25 composite Exhibit 103 for the record, your Honor, and it has



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1 not been admitted into evidence yet.

2 MS. ZAKARIN: Your Honor, I would prefer not to  
3 composite exhibits of things I don't even know what they are  
4 compromising.

5 Again, your Honor, none of these exhibits were  
6 identified, none of these documents were identified as exhibits  
7 in the pretrial order by plaintiffs.

8 MR. CRUMP: Here is your e-mail, sir, so you can  
9 follow along.

10 THE WITNESS: Thank you.

11 MS. ZAKARIN: Mr. Crump, can you tell me what date  
12 that document is?

13 MR. CRUMP: March 21.

14 Q. Mr. Cook, could you look at the e-mail --

15 THE COURT: Mr. Camp, if you're going to offer it, I  
16 would like to look at it, too.

17 MR. CRUMP: Yes, sir, your Honor.

18 BY MR. CRUMP:

19 Q. Do you see on March 21, Mr. Cook --

20 A. Mr. Camp.

21 Q. -- Mr. Camp, you received an e-mail from Ben Cook?

22 A. Correct.

23 Q. And what did it say regarding the musicology report?

24 A. Which one? This isn't regarding a report. This is about  
25 Ben Cook telling me there had been some communication. I think

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1 he's saying we should get a musicologist report, suggesting  
2 someone should.

3 Q. That's on the 21st, saying you should get one, and before  
4 that nobody had ever gotten one?

5 A. You wouldn't have any course to get a musicologist's report  
6 normally on a song.

7 Q. OK. Then can you look also on that e-mail, March 26?

8 A. Yeah.

9 Q. Where you're talking about --

10 MS. ZAKARIN: Excuse me. Which e-mail do you want?  
11 Because there's no March 26 on that e-mail chain.

12 MS. PASSEY: Exhibit 128.

13 MS. ZAKARIN: Exhibit 128 has been -- I thought it was  
14 struck by the court.

15 But let me see it, please.

16 MR. GOLDSMITH: We only go up to 127.

17 MS. ZAKARIN: That's because 128 was stricken. This  
18 is a March 26 document?

19 MR. CRUMP: Yes.

20 MS. ZAKARIN: 2015?

21 MR. CRUMP: Yes, that e-mail from him and Peter --

22 MS. ZAKARIN: I don't have it. It was not among the  
23 documents that you gave me to look at.

24 THE COURT: Ms. Farkas.

25 Ms. Farkas, is the incidence, are the incidence in

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1 these e-mails something to which you were referring in your  
2 opening the other day?

3 MS. FARKAS: No.

4 THE COURT: No?

5 MS. FARKAS: No.

6 THE COURT: OK. Thank you.

7 MR. CRUMP: We've talked about e-mails in this trial,  
8 your Honor. I'll tell you exactly what I'm talking about.

9 MS. ZAKARIN: I appreciate that.

10 THE WITNESS: That one?

11 MR. CRUMP: We're looking at the first paragraph of  
12 March 26 there.

13 THE WITNESS: Where your thumb is?

14 MR. CRUMP: Yes, the first paragraph.

15 THE WITNESS: OK.

16 MR. CRUMP: OK.

17 MS. ZAKARIN: Mr. Crump, can I see what that document  
18 is?

19 MR. CRUMP: You don't have that document.

20 MS. ZAKARIN: That's what I've been saying for a bit.  
21 You gave me a March 26 document.

22 MS. JACKSON: Yes, sir, I did.

23 MS. FARKAS: Is your graphics person publishing this  
24 to the jury? Because it's on our screen.

25 MS. JACKSON: No.

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1 MS. ZAKARIN: The bottom of that page?

2 Let me see. Excuse me.

3 BY MR. CRUMP:

4 Q. Mr. Camp, could you look at that first paragraph between  
5 you and Jim?

6 A. Um-hmm.

7 Q. And could you tell the jurors what you all are talking  
8 about, or if you want to just read it?

9 A. I think that's Jim telling me -- that's me telling --  
10 initially telling Jim that I had spoken to Ed. That, um, Peter  
11 who is a musicologist at Sony, had been looking into this.  
12 That's just Jim just saying, yeah, let's just see what comes,  
13 really.

14 Q. OK. Can you read that paragraph?

15 A. The one from Jim?

16 MS. ZAKARIN: If I can, your Honor, these are not  
17 documents in evidence. I gather he's trying to refresh the  
18 witness's recollection about what was transpiring, so they are  
19 not in their list. I don't know what they are doing with these  
20 documents right now. I don't think the witness should be  
21 testifying about a document that I think is being used to  
22 refresh his recollection about events in 2015.

23 MR. CRUMP: That's why he's looking at them, and I'm  
24 asking that question with the musicologist report.

25 Q. Can you tell the jury what it was talking about?

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1 A. Sorry. Can you repeat the question?

2 Q. Can you tell the jury what you're talking about in this  
3 e-mail exchange?

4 A. We are talking about getting a musicologist report in  
5 response to the Marvin Gaye conversation.

6 Q. Do you say anything about Sony?

7 A. Yes, it says what Sony/ATV's report says. I believe they  
8 commissioned the report.

9 Q. Does it say, I do not think you should say anything more  
10 than that until we see what the Sony/ATV report says?

11 A. Yeah.

12 Q. And then doesn't it also say, I think it is inadvisable to  
13 say that Oxendale says there are no infringement at this stage?

14 A. Yeah.

15 Q. And that is on the 26th, correct?

16 A. Correct.

17 Q. I now want to show you March 27, one day after.

18 A. OK.

19 THE COURT: Mr. Camp, do you have any recollection  
20 about what stimulated this exchange and these talks?

21 THE WITNESS: Yeah, it was a meeting between Marvin  
22 Gaye III -- it was a meeting between our record label and the  
23 Marvin Gaye heir.

24 MR. CRUMP: So --

25 THE COURT: The question is what was it about?

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1 THE WITNESS: I don't know what their meeting was  
2 about. But in passing, it was discussed whether we had ever  
3 considered that there was a similarity between *Thinking Out*  
4 *Loud* and *Let's Get It On*.

5 BY MR. CRUMP:

6 Q. So on March 26, you just stated that -- and you read that  
7 e-mail about there is no infringement at this stage.

8 Now, the next day, March 27, that first paragraph  
9 that's right above the one you just read.

10 A. Yeah.

11 Q. OK. Isn't that paragraph, in fact, saying there is no  
12 report yet?

13 A. I believe -- um, yeah. I don't think there was a written  
14 report. I think the initial -- the initial discussions were  
15 verbal.

16 Q. OK. Well, it's important to explain to the jury then,  
17 based on your interactions, they said there was no report. But  
18 then they said, but don't tell the Gayes.

19 Do you want to read that paragraph or does it refresh  
20 your recollection enough?

21 A. I can see it there. Do you want me to read it out?

22 Q. Yes, please.

23 A. It is inadvisable to say Oxendale says there is no case.

24 THE COURT: Please don't read it aloud --

25 THE WITNESS: OK.

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1 THE COURT: -- until it's received in evidence.

2 THE WITNESS: Fine. I won't then.

3 MR. CRUMP: OK.

4 BY MR. CRUMP:

5 Q. Does it say that it is inadvisable to tell the Gayes there  
6 is no case at this point because you all don't want them to get  
7 upset without having evidence?

8 MS. ZAKARIN: Your Honor, objection. He's reading  
9 from a document not in evidence.

10 THE COURT: Mr. Crump.

11 MR. CRUMP: Can I seek to move it into evidence, your  
12 Honor?

13 THE COURT: Do you remember I told you not to testify?

14 MR. CRUMP: Yes, sir.

15 THE COURT: It wasn't very long ago.

16 MR. CRUMP: Yes, sir.

17 THE COURT: Five minutes.

18 Did you just testify by reading from a document?

19 MR. CRUMP: I did, your Honor. My apologies.

20 Your Honor --

21 THE COURT: This isn't the first of my directions that  
22 you have forgotten and violated and apologized for.

23 MR. CRUMP: Your Honor, I'm simply --

24 THE COURT: Now I want to be sure that you are free to  
25 contribute to the trial of this case.

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1 MR. CRUMP: Yes, sir.

2 THE COURT: If you don't follow my instructions, I'm  
3 going to disqualify you.

4 MR. CRUMP: Yes, sir, your Honor.

5 THE COURT: And you are warned.

6 MR. CRUMP: Yes, sir.

7 THE COURT: So it won't come as a surprise if I  
8 relieve you from further service the next time you do that.

9 MR. CRUMP: Yes, sir, your Honor.

10 At this time, we would seek to move into evidence the  
11 e-mails of Mr. Camp with Mr. Sheeran, as well as with the  
12 companies discussing the claims of similarities between  
13 *Thinking Out Loud* and *Let's Get It On*.

14 MS. ZAKARIN: Your Honor, I'm not sure fully what  
15 Mr. Crump is offering into evidence, but these are documents  
16 that have, after a claim was made and reflect what the --

17 THE COURT: Excuse me, Mr. Zakarin.

18 MS. ZAKARIN: I'm sorry, your Honor.

19 MR. CRUMP: Your Honor, there were trial exhibits  
20 marked 128 --

21 THE COURT: Was that a question to the witness?

22 MR. CRUMP: No. I'm saying for the judge, it's marked  
23 128, 129, the trial exhibits of these e-mails.

24 THE COURT: Yes, sir.

25 MS. ZAKARIN: Yes, your Honor.



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1 THE COURT: You're offering them?

2 MR. CRUMP: Yes, we're offering them.

3 MS. ZAKARIN: We object, your Honor. These are post-  
4 claim correspondence produced in discovery. They were never  
5 identified in the pretrial order as exhibits that they were  
6 going to offer. They are hearsay, filled with hearsay, and I  
7 don't think they are relevant to the claim. They are post-  
8 claim communications.

9 MR. CRUMP: Your Honor, I will only be heard --

10 THE COURT: Well, I think it may have been fair at one  
11 point to suspect that they might be related. But that topic  
12 has been pursued with this witness who has contributed nothing  
13 in that direction. On their face, they contribute nothing in  
14 that direction, and they are excluded under Rule 403.

15 MS. ZAKARIN: Thank you, your Honor.

16 MR. CRUMP: Your Honor, if you exclude the e-mails  
17 from this witness, then I have no further questions for him,  
18 because I'm going to follow the court's direction.

19 THE COURT: Well, since I've just done that, I assume  
20 you're finished.

21 MR. CRUMP: I am. E-mails won't come in.

22 THE COURT: OK.

23 MS. ZAKARIN: I have no cross-examination of the  
24 witness, your Honor.

25 THE COURT: Thank you, Mr. Camp --

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1 THE WITNESS: Thank you.

2 THE COURT: -- for coming and giving all the help you  
3 could.

4 (Witness excused)

5 When we shall we return to the case?

6 MR. FRANK: Yes, your Honor.

7 I've spoken with opposing counsel, Mr. Zakarin. We  
8 have four exhibits that were marked jointly, and I believe  
9 there was no objection to having them admitted, Joint Exhibits  
10 1 through 4.

11 Mr. Zakarin, can you confirm that?

12 THE COURT: The joint exhibits, they are received.

13 MR. FRANK: Thank you, your Honor.

14 (Joint Exhibits 1 through 4 received in evidence)

15 With that, your Honor, the plaintiffs would rest their  
16 case.

17 THE COURT: Do you want to take a ten-minute recess?

18 THE DEPUTY CLERK: All rise.

19 THE COURT: Members of the jury, the funny thing is  
20 that underneath this, we have actually been making progress.  
21 You may have your doubts, but we have been.

22 Take a ten-minute recess.

23 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Is there anything you would like to do?

3 Aha, Mr. Zakarin is standing.

4 MS. ZAKARIN: I am.

5 Your Honor, I would like to hand up a formal written  
6 50(a) motion, or we can e-file it if you prefer. I would like  
7 to deliver or summarize it briefly for your Honor right now, if  
8 I can, orally.

9 THE COURT: Yes.

10 MS. ZAKARIN: A 50(a) motion, of course, is predicated  
11 upon the plaintiff's failure to satisfy the elements of their  
12 claim to make a prima facie case on their case such that no  
13 reasonable jury properly instructed could find to the contrary.

14 In this case, the plaintiffs in the pretrial order,  
15 the plaintiff's claim was a selection and arrangement claim  
16 based upon chord progression, anticipation, and the key  
17 signature, and that's said specifically in their proposed  
18 findings of fact one and two.

19 As you heard from Dr. Stewart in his testimony, they  
20 have abandoned that claim and they swapped out the key  
21 signature for the supposed melodies. So now their selection  
22 and arrangement claim consists of supposed melodies, the chord  
23 progression, and anticipation. For a selection and arrangement  
24 claim, the plaintiffs have to prove three things:

25 Numerosity, that the combination of unprotectable

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1 elements are sufficiently numerous;

2 Secondly, that the combination of unprotectable  
3 elements are new, novel, haven't been done before;

4 Thirdly, that those elements are not merely  
5 substantially similar, but are identical or virtually  
6 identical.

7 And the reason that they have to take all of those  
8 requirements is because the courts do not want to truncate and  
9 restrict future songwriters from being able to use these  
10 common, commonplace unprotectable elements, so that if somebody  
11 combines them, they have to be truly new and not something  
12 that's been done before so that it doesn't restrict the use.

13 Well, here on the plaintiff's case they have  
14 established that they haven't -- they haven't even come close  
15 to satisfying that, and can't.

16 Let's look at it. Three elements should not and have  
17 not in any case been ever held to be sufficiently numerous.

18 Number two, in terms of new or novel, Dr. Stewart  
19 couldn't testify as to any uniqueness or new novelty, and  
20 Dr. Stewart admitted that the chord progression had been  
21 previously used in other songs. It was not original. The  
22 anticipation was used in earlier songs.

23 And with respect to the now swapped-in melodies, what  
24 Dr. Stewart says that these melodies are not really melodies at  
25 all, they are pitches. What he did in his testimony was to

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1 essentially compared pitches, not melodies. And the copyright  
2 office has specifically said that a sequence of pitches is not  
3 even copyrightable to begin with because it is not a melody.  
4 Melody requires considerably more. It requires that there be a  
5 rhythmic organization of those pitches, and there is no  
6 testimony about that at all on their case.

7 But even if they got past that, we get to the  
8 identical or virtually identical. Starting with the chord  
9 progression, there is no dispute, Dr. Stewart admitted they  
10 were not identical. He admitted that there were different  
11 chords in *Thinking Out Loud* than there are in *Let's Get It On*.  
12 The anticipation is different in those two songs.

13 But perhaps, most importantly, as the court even saw  
14 this morning, the pitch sequences are not identical. They are  
15 not virtually identical. They are different. That came  
16 through loud and clear. So even if the pitch sequences  
17 themselves were melody, and they are not, the plaintiffs by  
18 their own evidence established that they can't satisfy any of  
19 those three requirements. They can't -- they didn't prove  
20 their case to a jury.

21 And the case at this juncture should be dismissed.  
22 They don't satisfy numerosity, they don't -- they don't come  
23 close to new or novel, and Dr. Stewart couldn't even testify to  
24 that, and yet he also admitted they preexisted. And they are  
25 not identical or virtually identical. And allowing a case like

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1 that on a selection arrangement to go forward would restrict  
2 songwriters of the future, present, from being able to use  
3 commonplace elements because it would not be a thin copyright,  
4 it would be a broader copyright of commonplace elements, and  
5 that is contrary to law.

6 We respectfully, at this point, your Honor,  
7 appreciating the jury's service and the dedication that they've  
8 shown in this case, we believe that the plaintiffs have failed  
9 to satisfy their burden of proof and this case should not go to  
10 a jury and should be dismissed at this point.

11 Thank you, your Honor.

12 THE COURT: What became of your defense of independent  
13 creation?

14 MS. ZAKARIN: The defense of independent creation  
15 exists. We would put that on obviously in our direct case. If  
16 we had to get to it, if they had made a prima facie case that  
17 we would be rebutting and showing that our clients  
18 independently wrote *Thinking Out Loud* without any reference to  
19 *Let's Get It On*.

20 And that evidence, if we have to go forward, would be  
21 shown. But we don't have to disprove that on their case. On  
22 their case, they failed to satisfy their burdens of proof. We  
23 believe that, if we have to, we will prove independent  
24 creation.

25 THE COURT: There was some testimony on that point

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Direct - Camp

1 yesterday.

2 MS. ZAKARIN: Independent creation?

3 THE COURT: I thought so.

4 MS. ZAKARIN: Well, it may well have been when they  
5 put Mr. Sheeran on in their case, that he may have testified to  
6 it, but that was their requesting it. If that is a case on  
7 their case, the only evidence that is unrebutted is that he  
8 independently created it. But that goes to our burden of proof  
9 would be satisfied since there was nothing to rebut it on their  
10 case. And that was their choice to call Mr. Sheeran on their  
11 case.

12 THE COURT: But you're not relying on it at this  
13 juncture?

14 MS. ZAKARIN: Your Honor, I'm perfectly happy to rely  
15 on it because it is unrebutted testimony based upon their  
16 having called Mr. Sheeran on their case. There is nothing to  
17 rebut it. All I'm saying is that independent creation is  
18 unrebutted evidence that they put in themselves.

19 But they also failed to satisfy, separate and apart,  
20 their own burden of proof to make out a prima facie case for a  
21 selection and arrangement, even if their having swapped out the  
22 key for the supposed melodies at the last minute.

23 On both those bases, your Honor, we would request that  
24 the claim be dismissed at this time. I appreciate your Honor  
25 reminding me that they have called Mr. Sheeran on their case

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1 and there was some testimony that is unrebutted.

2 THE COURT: Thank you.

3 MR. FRANK: Would you like for me to respond, your  
4 Honor?

5 Thank you.

6 As a preliminary matter, your Honor, we obviously are  
7 at a little bit of a disadvantage. I was just handed this  
8 58-page motion, or however long it is, a minute ago. But just  
9 going off the cuff, your Honor, as a first point, the  
10 defendants haven't raised anything new that wasn't raised in  
11 excruciating fashion, pain-staking fashion, in their motion for  
12 summary judgment and their subsequent motions for interlocutory  
13 appeal, what have you.

14 There are three things which, as the court will  
15 recall, it denied back in January of 2019, I believe. But  
16 probably more important, your Honor, there are three things for  
17 copyright infringement we're required to prove. Two of them  
18 have been admitted to. One being his beneficial interest.  
19 They admitted to that. One being an access. They've admitted  
20 to that. So the only thing we were required to prove from a  
21 copyright standpoint for purposes of the trial was copying.

22 And that was Dr. Stewart's role. I think he gave  
23 ample evidence to demonstrate copying. There are two elements.  
24 In fact, he was specifically asked prior -- he was specifically  
25 asked --



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Direct - Camp

1 MS. FARKAS: Too close.

2 MR. FRANK: OK. He was specifically asked prior to  
3 the close of his testimony on direct whether or not he, in his  
4 musicological opinion, whether there is evidence that Amy Wadge  
5 and Ed Sheeran copied *Thinking Out Loud*. He said yes  
6 unequivocally. He was asked today specifically. I had to ask  
7 him several times to get to it. He was asked today whether or  
8 not the common musical element combination was in -- that he  
9 thought was original in *Let's Get It On* was also in *Thinking*  
10 *Out Loud*. He did that.

11 I would point out for the court that there are two  
12 components of the plaintiff's claims and that's reflected in  
13 the proposed jury instruction. One being Dr. Stewart has  
14 identified three separate melodies that he, from his  
15 professional opinion have been taken. Those melodies alone,  
16 even if the jury decided that one was infringed upon, that  
17 would be enough to get to a jury.

18 But, again, that is a question of -- that is a  
19 question to go to a jury. They will have an opportunity to put  
20 their musicologist on, Dr. Ferrara, and he can rebut whatever  
21 he thinks is appropriate that Dr. Stewart testified to. But  
22 even one of those melodies taken alone is enough to prevent or  
23 bar entry of the directed verdict.

24 But notwithstanding the three melodies that  
25 Dr. Stewart testified to, he also testified to a selection and

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Direct - Camp

1 arrangement. I would note, just for clarification of the  
2 record, that Mr. Zakarin, when he was speaking prior, suggested  
3 that we were suggesting that the key -- that the key issue was  
4 part of the selection and arrangement argument. If you'll  
5 recall, your Honor, Dr. Stewart was specifically asked by  
6 Ms. Farkas yesterday whether the key made a difference, and he  
7 said it didn't.

8 But he did mention that three separate common elements  
9 combined together that are reflected in *Thinking Out Loud* was  
10 the selection, constituted the selection and arrangement  
11 argument. If you recall, your Honor, I believe it was in your  
12 order on the summary judgment. We only need two and  
13 Dr. Stewart testified to three.

14 So under those two theories, selection and arrangement  
15 and the three independent melodies, I would respectfully submit  
16 we have more than enough to be submitted to a jury.

17 THE COURT: Thank you, Mr. Frank.

18 MR. FRANK: Thank you, your Honor.

19 THE COURT: Under the first sentence in Rule 50(b), a  
20 decision on these matters is reserved.

21 Thank you very much. We'll finish up the recess and  
22 start with the defense case.

23 MR. FRANK: Thank you, your Honor.

24 (Recess)

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Direct - Sheeran

1 (Jury present)

2 MS. FARKAS: Your Honor, the defense calls Ed Sheeran.

3 THE COURT: Mr. Sheeran, you're still under oath.

4 THE WITNESS: Yes.

5 THE COURT: OK.

6 EDWARD CHRISTOPHER SHEERAN, resumed.

7 DIRECT EXAMINATION

8 BY MS. FARKAS:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Mr. Sheeran, how old are you?

12 A. I'm 32 years old.

13 Q. And are you married?

14 A. I am, yes.

15 Q. And do you have children?

16 A. I have two daughters, yes.

17 Q. And how old are they?

18 A. One is two and a half, one is going to be one in two weeks.

19 Q. Where were you born?

20 A. I was born in Halifax, which is in West Yorkshire in the  
21 north of England.

22 Q. And while I think everyone knows the answer to this  
23 question, what do you do for a living?

24 A. I'm a songwriter and a performer.

25 Q. And in addition to writing songs for yourself to perform,

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Direct - Sheeran

1 do you also write songs for other artists to perform?

2 A. I've written songs for other artists. I've written songs  
3 with other artists, yeah. I've done all wide spectrum of  
4 songwriting.

5 Q. Could you name some of the artists for whom you've written  
6 songs?

7 A. Um, yeah. I've wrote ones that you would know, I hope. I  
8 wrote *Love Yourself* for Justin Bieber, and another song that  
9 went number one called *Corridor* for him. I did billboard  
10 number one for BTS *Permission to Dance*. I've written with The  
11 Weeknd, written with Taylor Swift, written with Beyonce,  
12 written with Elton John. A long list.

13 Q. How did you first develop an interest in music?

14 A. I joined the church choir when I was four years old. My  
15 mom sung in the church choir, and it seemed like something fun  
16 to do, so I joined that. That is where I learned harmony and  
17 to sing in tune and stuff like that.

18 I went with my brother, and then I guess I picked up  
19 playing the piano after that. My grandmother, who *Thinking Out*  
20 *Loud* was inspired by my grandmother who played piano, and she  
21 taught they how to play-ish. And then I gave up the piano to  
22 start guitar because I wanted to be in rock and roll.

23 Q. How old were you when you wrote your first song?

24 A. I remember -- it's quite embarrassing to say -- a song I  
25 wrote when I was 11, I wasn't a teenager yet, called *Typical*

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Direct - Sheeran

1 Average Teen and the lyrics, I'm a typical average teen, if you  
2 know what I mean.

3 I get asked about it a lot in interviews, and it does  
4 get brought up every now and then and is embarrassing.

5 Q. Have you had -- I won't ask you to sing that song.

6 Have you had any formal musical training?

7 A. I mean, I don't really know what you would class as formal.  
8 I had a piano teacher from -- a guy I went to school with's mom  
9 taught piano and cello, and I had piano and cello lessons with  
10 her for. But, I guess, some of -- we call it primary school,  
11 you guys call it elementary school, so a little bit of time in  
12 there. Then I had a guitar teacher when I was 11 for not a  
13 very long period of time at all, and then another guitar  
14 teacher after that. So sporadically.

15 But I wouldn't say, like, I haven't got a degree in  
16 music. I can't read music. I'm not a -- I am not classically  
17 trained in anything, but I can play what I can play.

18 Q. Now, you mentioned guitar. Do you remember when you  
19 started playing guitar?

20 A. It was 2002 the Queen's jubilee, golden jubilee, and she  
21 had a concert outside Buckingham Palace on television. Eric  
22 Clapton got up, played the first opening riff of *Layla*. I  
23 remember being 11 and being like, I want to do that. And yeah,  
24 I got a guitar for Christmas or my birthday or something and  
25 learned.

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Direct - Sheeran

1 Q. Do you recall when you first performed in any way before a  
2 live audience?

3 A. Again, it was when I was 11 and it was the school charity  
4 concert in the school hall. And it was *Layla* by Eric Clapton,  
5 because it was the only song I learned how to play. I got up  
6 and played that.

7 Q. Do you sing your songs or songs written by others?

8 A. Well, now?

9 Q. Yes. I'm sorry, no. In that first performance, was it  
10 just *Layla*?

11 A. Oh, yeah. Yeah, it was only *Layla*, yeah. I started  
12 writing songs when, like, properly -- oh, sorry. Properly,  
13 when I was 13 years old. My dad took me to songwriting with  
14 Eddie Rice with my cousin, and I always thought you had to be  
15 in a band to write songs and be an artist. I went to go and  
16 see him. It was one man on the stage with an acoustic guitar  
17 singing songs that he had written. And yeah, it was the sort  
18 of point when you're a kid and you're, like, Oh, that looks  
19 like something I can do.

20 That is when I first started really writing songs.  
21 And from that point, I didn't really cover songs. I -- yeah,  
22 unless it was like -- I used to play weddings to, um, make  
23 money for rent. So I would play cover songs at weddings on the  
24 weekends.

25 Q. What is the highest level of education you achieved?

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Direct - Sheeran

1 A. I mean, you wouldn't have it in America, but I didn't -- I  
2 left school at 17, so I didn't get whatever that is. I got  
3 whatever you get at 16, and then -- so we call it GCSE  
4 basically. I don't know what you guys would call it in  
5 America.

6 Q. What was the name of the school that -- the last school you  
7 went to?

8 A. It's Thomas Mills High School, state-funded comprehensive  
9 school in Suffolk.

10 Q. And how old were you when you left that school?

11 A. I was 17 years old when I left that school.

12 Q. Do you recall why you dropped out of school at that time?

13 A. Um, yeah. I wanted to be a musician. From where I stood,  
14 all I needed to do was get experience and fall on my face a  
15 couple of times. And you sort of learn how to perform by  
16 failing, basically. You don't learn anything from achieving  
17 things. You learn stuff from failing.

18 I wanted to go out into the world, play gigs, bomb,  
19 learn how to work audiences, learn how to write songs, and  
20 write songs every day and do shows every day, sometimes three  
21 in a night. And, yeah, they just describe it as, like, getting  
22 your chops. So I went out to get my chops.

23 Q. Are you familiar with someone who goes by the name Just  
24 Jack?

25 A. Yes.

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Direct - Sheeran

1 Q. Who is Just Jack?

2 A. Just Jack is a U.K. artist who I'm pretty sure he had a  
3 number one single when I was in high school, but he took me on  
4 my first U.K. tour. Well, my first, like, big U.K. tour. I  
5 had been on a U.K. tour in a minivan with a bunch of  
6 singer/songwriters, but no one came to the gigs.

7 Q. Do you recall how it came about that you went on tour with  
8 Just Jack?

9 A. Yeah. I used to live above a pub called the T-bird, which  
10 ran an open mic night every Thursday. And I played the open  
11 mic night every Thursday. And the guy that ran the open mic  
12 night was friends with Jack, and Jack was looking for an  
13 opening act. So the guy that that ran the open mic night said,  
14 There is a kid that lives above this, he plays at the open mic  
15 nights, I think he's good, take him on. That's how I got the  
16 gig.

17 Q. Do you recall in what year and month that you went on tour  
18 with Just Jack?

19 A. Yeah, it was my first big tour. It was October 2009.

20 Q. Where was this tour?

21 A. It was around England. And I can't remember if we did  
22 Scotland. I'm pretty sure it was England, north of England,  
23 London, Birmingham, those sorts of place.

24 Q. And in terms of size, do you recall what types of venues  
25 you were performing in on this tour?



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Direct - Sheeran

1 A. Between 1,000 and 2,000 people. Depends, like, up north,  
2 he didn't do as well as down south. But yeah, it was those  
3 sort of venues.

4 Q. At this point, was that the largest size venues you had  
5 performed in, generally speaking?

6 A. Um, I had done a couple of support slots before that, but I  
7 was always, like, the first, first, first on, so I would play  
8 to an empty room or people getting their beers or whatever. So  
9 yes, this was the biggest crowd I played before. I played  
10 venues big before, but no one was in them.

11 Q. Do you recall roughly how many shows you did with Just  
12 Jack?

13 A. Um, I couldn't give you a specific number. It would be  
14 between 10 and 15 probably.

15 Q. How did your parents feel about you leaving school at that  
16 time?

17 A. Oh, my dad -- well, my dad was the one that suggested that.  
18 He worked in the art world. He was very much like, you don't  
19 need a degree to learn how to paint. You just have to paint  
20 and then you learn as you go, trial add error. So he was very  
21 supportive of it.

22 My mom was my mom. She was not keen on me sleeping on  
23 stranger's sofas and not having income. But she's all right  
24 with it now.

25 Q. At the time that you left school and went on tour with Just

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1 Jack, had you released any music of your own?

2 A. Yeah, I -- yeah. I mean, release is a very, very -- like,  
3 I printed up CDs that I sold at gigs from my backpack and,  
4 yeah. I wouldn't say that they were, like, commercially  
5 successful, but, you know, people...

6 Q. OK. Before we get into specifics, I would like to just  
7 explain a few terms.

8 Are you familiar with the term demo in the context of  
9 recorded music and what does that mean to you, if so?

10 A. A demo could be anything. So in regards to *Thinking Out*  
11 *Loud*, the demo of the song is the recording that me and Amy  
12 recorded on the iPhone. In my mind, that is what the demo is.

13 And then when we went into the studio to record it,  
14 that would be the recorded version. I've had a lot of songs of  
15 mine. The demo, quote-unquote, that you write on the day  
16 actually just ends up being the song that you release. For  
17 instance, there is a song we wrote and recorded on that day,  
18 and those vocals and most of the music on it is the music that  
19 you hear released. That is quite common.

20 Q. Are you familiar with the term EP?

21 A. Yeah, yeah. EP -- well, it stands for extended play, and  
22 today could be between sort of two and five tracks. My manager  
23 Stuart gets quite exasperated with me because I basically call  
24 an EP anything to fit a load of songs on it, so it's not  
25 technically an album. I have released EPs with ten songs on

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1     them before and I have released EPs with two songs on them  
2     before. But an album is technically anything over seven  
3     tracks.

4     Q. And the term LP, is that what you're referring to?

5     A. LP is long play. Yes, that would be an album.

6     Q. Do you recall the first recorded music that you released to  
7     the public?

8     A. My dad got me a 4-track recorder for Christmas around the  
9     time that I started writing songs, and I made a 14-track album  
10    in my bedroom calling *Spinning Man*. I think I printed up 20  
11    copies of them and I sold them at school, and they now do quite  
12    well on eBay.

13    Q. And after releasing *Spinning Man*, do you remember what the  
14    next music was that you released?

15    A. It was EP called the *Orange Room*. An EP which was five  
16    tracks from *Spinning Man*. There was a private school near the  
17    area that had built a recording studio, and I met the guy that  
18    worked in the private school of the recording studio. He gave  
19    me time in that studio to record this EP.

20    Q. Do you recall when that was?

21    A. I put it out in 2005, so it would have been around then.  
22    But, by the way, putting it out is very, very loose. Like, my  
23    mom has most of them still.

24    Q. Do you recall what you released next?

25    A. It was an album -- my cousin worked in a studio in London,

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1 and I worked with his mate that engineered there. And I made  
2 another 14-track album that I self-entitled. After that --  
3 well, pretty much directly after that I made another album  
4 called *Want Some*, which -- the thing is, I wouldn't have -- I  
5 wouldn't say they are in my discography. They are not like  
6 saying, this is my debut album. They were records, I would see  
7 them as, like, sketches before the painting, if that makes  
8 sense.

9 Q. And were you performing live during that time?

10 A. Yeah. Since I've got on stage, I've never not performed.

11 Q. How often, like if we're talking about now in the 2006-  
12 2007 time period, how often would you say you were performing  
13 during that time?

14 A. 2006. I was 15, so I would say weekends. I would finish  
15 school and I would go -- I did my first show in London when I  
16 was 15, and we lived quite far from London. I wouldn't gig  
17 there that much, which is why I stopped school to go to London  
18 to play every night.

19 Q. And when you were performing during this time, we're  
20 talking about -- what type of places were you performing at?

21 A. Um, I mean, yeah, empty bars, clubs, restaurants. I played  
22 bingo halls. Yeah, I've played anywhere where no one was.

23 Q. At some point did you obtain professional management?

24 A. I got my first manager when I was 16. He found me on  
25 Myspace. He worked for a management company called Crown Music

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1 Management, who at the time, I guess, artists you would have  
2 heard of, they looked after Jessie J and Ellie Golding and the  
3 Sugababes, who are a big girl band in England.

4 And yeah, I remember the Myspace message popping up  
5 and going downstairs and showing my parents and being super  
6 excited about it.

7 Q. And I'm sorry if you said it. How old were you at that  
8 time?

9 A. That was in 2007, so I was 16.

10 Q. And what is your manager now?

11 A. My manager is Stuart Camp, who didn't know he was coming up  
12 here, but...

13 Q. And how long has Mr. Camp been your manager?

14 A. I met Stuart -- Stuart looked after Just Jack, the artist  
15 that took me on tour. So I met Stuart in at least 2009. There  
16 was a conflict of interest. I had management at the time, who  
17 I was leaving. And he said, whenever you've left them, come  
18 back to me. So I officially started with Stuart in 2010.

19 Q. And after the tour with Just Jack, did you release any  
20 other EPs?

21 A. Yep. In 2010, shortly after the Just Jack tour, I  
22 basically saved up all this music from being with this last  
23 management company, thinking that I would get signed, get a  
24 record deal, make an album. It just wasn't happening.

25 So I had all this, like, all these songs that I had

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1 written. And I just said to Stuart, I'm just going to release  
2 them, not on a label, because no one wants to sign them. So I  
3 might as well put them out there and let people hear them. So  
4 I released five EPs that year. One was called *You Need Me* EP,  
5 one was called *Loose Change*, one was called *Songs I Wrote With*  
6 *Amy* -- and Amy is who I wrote *Thinking Out Loud* with -- one is  
7 called *Live at the Bedford*, and one is called *No. 5*  
8 *Collaborations Project*.

9 And in the course of that year, they had gotten  
10 attention. *The A Team*, which is from the *Loose Change* EP  
11 started to become a hit, and I got signed in 2011.

12 Q. And did someone produce the *Loose Change* EP?

13 A. Yeah. So those EPs are the *Live at the Bedford*. They were  
14 all done by -- no, *Loose Change*, *Songs I Wrote With Amy*, and  
15 *No. 5 Collaborations Project* were done by Jake Gosling, who he  
16 produced *Thinking Out Loud* and *You Need Me*, an EP produced by a  
17 guy named Julian Simmons, who made the first two, like, long  
18 four albums that I made. And then there was a dispute after  
19 getting signed because he wanted more money. We went back and  
20 recorded them, and I guess I would have been the producer of  
21 that.

22 Q. When did you first meet Jake Gosling?

23 A. I met Jake Gosling the day I moved to London. I moved to  
24 London top of September 2017 -- I'm sorry -- 2008. And I moved  
25 above this pub. I came from the countryside and had never

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1 heard, like, police sirens before. I had grown up around cows  
2 and sheep and stuff like that.

3 I was kept up all night next to a main road, and I  
4 went down to where Jake lives and, sorry, it's about an hour  
5 from London on the train, and I wrote a song called *The City*,  
6 which is on my first album about how the city doesn't sleep,  
7 and that was my first introduction to Jake.

8 Q. What is the *No. 5 Collaborations Project* EP, can you tell  
9 us a little bit about that?

10 A. Yeah, it's -- there is a genre of music in England called  
11 grime, which is, I guess, a derivative of hip hop, but very  
12 different. Very different beats per minute. 140 beats per  
13 minute as opposed to 90, between 90 and 100. And I had grown  
14 up listening to grime music. I'm not sure you have heard of  
15 Dizzee Rascal, Scepter, and stuff like that. That is sort of  
16 the music in school I grew up listening to.

17 I moved to London. I made friends with this guy  
18 called Jamal, who ran a YouTube channel called SPTV, and he  
19 introduced me to all these artists I had grown up listening to,  
20 and I made a project with them.

21 Q. Did you collaborate with other artists on this *Collaborate*  
22 *No. 5*?

23 A. Yeah. Each song was a different collaboration with a  
24 different artist. Some songs had three artists, some songs  
25 just had one.

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1 Q. Can you name some of the artists that were on that project?

2 A. Um, the first song is with a guy called Devlin, next song  
3 with P Money, then it's JME and Mikill Pane, Dot Rotten, and  
4 Rem 32. These are quite big artists in England.

5 Q. And who came up with the concept for this album?

6 A. I did, and -- yeah, I wanted to release five EPs to  
7 showcase all the different types of music I was making in that  
8 year and previously. That was always meant to be the last one,  
9 because it was the less like the music I had been making.

10 It was a bit more of a curveball. A lot of my friends  
11 told me not to pull out

12 Q. Was *Collaborations No. 5* successful?

13 A. Yes, it was commercially successful, yes.

14 Q. Do you recall whether it charted or?

15 A. It was less about, like -- at that time it was less about  
16 the actual chart position. It charted at 46, which isn't that  
17 impressive. But on iTunes, which was hugely important at that  
18 time, it went to number two and stayed there. And I had put it  
19 out myself and self-distributed it, so I had basically a lot of  
20 record labels wanting to sign me.

21 Q. At the time that this EP was released, did you have at  
22 record deal?

23 A. No. I had been speaking to Atlantic -- well, I signed with  
24 Asylum, which is a subsidiary of Atlantic, which is a  
25 subsidiary of Warner Records. So I had been speaking to Ed



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1 Howard and Ben Cook, who was previously mentioned in this case  
2 for, I guess -- I guess like half a year, maybe more.

3 I slept on Ed Howard's sofa unknowingly, and I didn't  
4 know he worked for a record label. And Stuart was said I had  
5 been playing songs for this guy from a record label. So I had  
6 been speaking to them for a while, but I wanted to complete my  
7 five EPs before signing a deal.

8 And so yeah, I put the EP out top of January, and I  
9 signed my deal mid January.

10 Q. How old were you at the time?

11 A. I was 19 years old.

12 Q. Do you have an understanding as to what a music publisher  
13 does?

14 A. I wouldn't know the ins and outs of everything they do. I  
15 know they collect royalties on songs. They can set up  
16 songwriting sessions. I guess they register the copyright.  
17 That is something been made aware of to me in this case.

18 Yeah, in my mind, when I signed the record deal, it  
19 was for records, and publishing was for songs. I didn't really  
20 know that much about it.

21 Q. And did there come a time when you did sign with a music  
22 publisher?

23 A. I signed with Sony that year. I remember wanting to wait  
24 until *The A Team* had become a hit, because I hadn't signed my  
25 record deal for a great deal of money, and I wanted to wait out

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1 in publishing and buy a house.

2 Q. Prior to signing with Warner and Sony, how often -- around  
3 that time, how often were you performing live?

4 A. I would play anywhere that would have me. Yeah, that was  
5 on Thursdays and Sundays would be nights that I could do three  
6 gigs in a night. There were -- yeah, I lived in basically  
7 north London, and north London had, on the Tube line, probably  
8 30 open mic nights in a week that you could play. It was  
9 probably three or four you could do in South, three or four in  
10 East, three or four in West. Primarily north London is where I  
11 would do the shows, and they were everywhere. Everywhere.

12 Q. If you can remember, at the time that you signed with  
13 Warner and Sony, roughly how many songs had you written?

14 A. Hundreds.

15 Q. What was your first full-length album after signing with  
16 Warner?

17 A. My debut album was an album called +, released September 9,  
18 2011.

19 Q. How many tracks are on +?

20 A. On the standard version of +, there is 12 tracks. On the  
21 deluxe, there is 16.

22 Q. What is a single?

23 A. A single -- I mean, a single could be standalone. It's not  
24 actually an album. The way I understand singles, you have an  
25 album, you pick a song, that is used to promote the album, goes

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1 on radio, you play on TV. People discover the album and listen  
2 to the album. I've released singles that aren't on albums  
3 standalone. It's just a song that lives on its own, but it  
4 could be connected to a project.

5 Q. And in connection with singles that are released that also  
6 appear as tracks on an album, how is it decided which tracks  
7 will be released as singles?

8 A. Back in those days before streaming, it was you picked them  
9 before. So you would say *The A Team*, already had a music video  
10 and already had generated quite lot of interest, so that would  
11 be an obvious first single. *You Need Me, I Don't Need You* was  
12 my second single. That was kind of a fan favorite I played at  
13 gigs. *Lego House* was probably the most pop I had on that  
14 record, and then *Drunk*, again a real pop song on the record,  
15 and then *Small Bump* was we wanted to showcase something from  
16 the album that was a bit more artistic, I guess. And then *Give*  
17 *Me Love* just because that was a fan favorite as well.

18 But nowadays with singles, when I put out ÷, you  
19 basically -- we chose *Shape of You* and *Castle on the Hill*  
20 because they were exciting. And then you put the album out and  
21 fans basically stream songs. And then you go, if they like  
22 that song, we go to that song next. Nowadays it is very much  
23 fan led. Back in the day, you would have a meeting and who  
24 thinks this and who thinks that.

25 Q. You mentioned *The A Team* as the first single off of ÷.

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1 Was *The A Team* single successful in the United States?

2 A. Yeah. It took a very long time, though. It took a long --  
3 it was 18 months of every three months saying, we're giving up  
4 on this, we're giving up on this, and I toured and toured and  
5 toured and eventually it became a success. Yeah, it's done  
6 well in the States.

7 Q. Has it reached any gold or platinum status?

8 A. Multiple platinums, yes.

9 Q. Can you describe what gold and platinum status means?

10 A. Gold is 500,000 units in the United States, and platinum is  
11 a million units and diamond is 10 million units. It differs  
12 from country to country. England could be 300,000 units for an  
13 album is platinum and 100,000 units for an album is gold. In  
14 New Zealand it's, like, 15,000 units is platinum and seven and  
15 a half thousand is gold. It differs from per capita,  
16 basically.

17 Q. Now, you mentioned other singles from +, I think you  
18 mentioned *You Need Me, I Don't Need You*, *Lego House*, *Drunk*,  
19 *Small Bump*, I think?

20 A. *Give Me Love*, yeah.

21 Q. Generally speaking, were those singles successful in the  
22 United States?

23 A. Um, generally speaking, no. No. *Lego House*, I think, went  
24 to 46 or something like that, but it's -- as I said in my  
25 testimony the other day, like, that chart position doesn't

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1 necessarily doesn't always say what a hit is. *Give Me Love* is  
2 now multiple times platinum here, and that didn't really chart  
3 here. So over time a song can become quite big without  
4 necessarily having the chart success. I've had lots of songs  
5 that have been commercial failures that have actually gone on  
6 and done quite well over time.

7 Q. Did you perform any of the songs from + on any television  
8 shows that air in the United States?

9 A. Yeah. I played *The A Team* on all the late night, I did  
10 Letterman before he stopped, I did Fallon and Kimmel, and CBS  
11 This and Today Show. Like, I'm not super familiar with, like,  
12 everything. I played the Grammys with Elton John. We sung *The*  
13 *A Team*. I did -- I did all -- I played -- I remember playing a  
14 TV show in Chicago for their weather report, and they were  
15 running the credits as I started *The A Team* and I was like, oh.  
16 So I didn't get to finish the song. I played lots of TV shows  
17 in the States.

18 Q. Did you perform at any award shows other than the Grammy  
19 Awards?

20 A. I did The Billboards. I did the Billboard Awards, I think  
21 something in country music. A lot at that time was --  
22 everything was happening very, very fast, so I wouldn't able to  
23 differentiate. I think the VMAs, I did VMAs. AMA. I did  
24 award shows, yes.

25 Q. Have you ever performed at the Olympics?

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1 A. I played the closing ceremony at the Olympics. I played  
2 *Wish You Were Here* with Nick Mason from Pink Floyd, yeah.

3 Q. Do you recall what year that was?

4 A. That was 2012 in London.

5 Q. And other than performing a duet with Elton John, have you  
6 performed live with anyone else we might be familiar with?

7 A. Yeah. Yeah, I've song with Beyonce, I've song with The  
8 Rolling Stones, sung with Taylor Swift, sung with Justin  
9 Bieber, yeah. Stevie Wonder, we did *Pastime Paradise* together.  
10 Yeah, there's a long -- there's a long list. Eric Clapton, I  
11 sung with him. Eminem, 50 Cent. Yeah.

12 Q. Overall, do you recall whether the + album achieved  
13 commercial success in the United States?

14 A. Yeah, it did. It went multiple times platinum here.

15 Q. And did you go on tour to promote +?

16 A. Yeah, I went on extensive tours. I toured first time I  
17 came here with a band called Snow Patrol, and then I did two of  
18 my headline tours here, which were sort of three, four months  
19 long. Then I went on Taylor Swift Red tour for six months and  
20 then I did my own arena tour after that.

21 Q. And in terms of Snow Patrol and Taylor Swift, what type of  
22 venues were you performing in?

23 A. Snow patrol, it was theaters, so anywhere between 2,000 and  
24 5,000 people. And Taylor was arenas and stadiums, so anything  
25 between 12,000 people and 50,000 people.

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1 Q. Did there come a time when you toured on your own as the  
2 headliner to promote +?

3 A. I was constantly touring on my own throughout that --  
4 throughout that, yeah. So it was sort of in tandem to doing  
5 that.

6 Q. Did you perform at Madison Square Garden on your own?

7 A. Yeah, I sold out Madison Square Garden in 2013.

8 Q. Are you familiar with the film call *The Hobbit*?

9 A. Yes.

10 Q. And did there come a time you were asked to write a song  
11 for *The Hobbit* film soundtrack?

12 A. Yeah. End of 2013, they were making *The Desolation of*  
13 *Smaug*. I don't know if you guys have seen it. It's worth  
14 watching. Peter Jackson, who was directing it, got in touch  
15 with me. He flew me over to New Zealand and I wrote the end  
16 song for that and produced it and played pretty much all the  
17 instruments on it.

18 Q. Turning back to the + album, when did you start writing  
19 songs for that album?

20 A. The first song I wrote for the album *You Need Me, I Don't*  
21 *Need You*, which is when I was 15.

22 Q. When did you finish writing songs for that album?

23 A. I released that album -- I finished it probably February  
24 2011, so my birthday is in February, so I was either 19 or just  
25 turned 20.

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1 Q. Do you recall approximately how many songs you had written  
2 at that point in time?

3 A. Hundreds.

4 Q. I would like to talk a little bit about your songwriting  
5 process, and I would like to focus on the time period between  
6 your early teens, sort of through the + album.

7 A. Yeah.

8 Q. Did you have any particular process for writing songs  
9 during this time?

10 A. There is not really a rule to writing songs. It's, like,  
11 it could be anything. So *A Team*, for instance, was -- I wrote  
12 lots of rhyming couplets, like *A Team*, *daydream*, *day screen*  
13 *pastry*, and I had them on my phone at the time in my notes.  
14 And then when inspiration hit for that song, I went on the  
15 notes and saw all these rhyming couplets. That is what the  
16 song became.

17 Where as a song like *Lego House* written in the studio,  
18 we were pitching for -- pitching means we were writing a song  
19 for someone. we were writing for a boy band, so we had a brief  
20 to write this boy band song, and that is what we were going  
21 for, basically.

22 So, yeah, there is, like, the process could be  
23 anything. Like *Perfect*, I took an acoustic guitar in a  
24 basement. *Shape Of You* was, like, sounds, I was in a studio  
25 with three people, and we were throwing out ideas. There is no



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1 set rule to songwriting.

2 Q. And staying with the timeframe of your teens through the +  
3 album, how often would you say you were writing songs during  
4 that time period?

5 A. If it was a day of the week, I was writing songs.

6 Q. And when you were writing songs during this time, just  
7 getting a little more granular, would you write using an  
8 instrument?

9 A. Not always, no. I wrote backing tracks. There was a  
10 doublet group that I wrote some songs for + on. I wrote songs  
11 for One Direction's album with them, and they were backing  
12 tracks.

13 Q. Did you ever use an instrument when you were songwriting?

14 A. Yeah, of course. Yeah.

15 Q. What would that be?

16 A. I have written songs on guitar. I've written songs on  
17 piano. Yeah, mostly guitar and piano.

18 Q. How do you preserve what you're writing?

19 Do you do anything else to record or save what you're  
20 writing as you're writing a song?

21 A. It would be voice memos. I haven't had a phone since 2015.  
22 But pre 2015, I would record them on voice memos on my phone,  
23 and I've had an iPad since then and I work off e-mail, and I  
24 record them on voice memos on my iPad.

25 It's more of a distraction thing. I was always on my

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1 phone, so I got rid of it, and now I'm present.

2 Q. How about lyrics, was it your practice to write lyrics down  
3 as you wrote them?

4 A. Not really, no, no. I mean, I have done -- I mean, I would  
5 write lyrics on notes on iPhone or iPad, but quite a few songs  
6 that I've written have been sort of line by line. You go in a  
7 booth -- have it in your head, go in the booth, record it, come  
8 out, find the next line, go in the booth and record it. They  
9 would be written down later, basically.

10 Q. When you first starting writing songs during this time, did  
11 you write alone or write with other people?

12 A. Both. I've written -- *The A Team*, for instance, is alone.  
13 *You Need Me* is alone. *Small Bump* is alone. *Lego House* would  
14 be not alone. *I See Fire* would be alone. *Give Me Love* was not  
15 alone. It just really differs.

16 Q. Who were some of your early musical influences?

17 A. I was brought up on Elton John, Van Morrison, Eminem. My  
18 uncle bought me an Eminem CD when I was nine, and that  
19 lyrically, I listened to him a lot. Stevie Wonder I loved.  
20 Joni Mitchell. My mom had a Shania Twain CD. That was pretty  
21 much the only CD my mom bought for herself. She's not a huge  
22 music fan, although she'll say she's a fan of mine.

23 Q. I should hope so.

24 A. I never know if she is or not, though.

25 Q. I'll leave that alone. How, if at all, has your

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1 songwriting process changed from the time that you started  
2 writing as an early teenager until now?

3 A. I think, like anything, you get better the more you do it.  
4 So I would -- I guess when I was a teenager, I would write one  
5 or two songs a day. Now, the most I've written is probably  
6 eight or nine songs in a day. That just comes from practice.

7 Yeah, it's -- if you set up a soccer goal and made me  
8 kick into the top corner 2,000 times, eventually I would get it  
9 every single time, and that is kind of how it is in  
10 songwriting. You just learn -- you learn the process.

11 Q. Would it be safe to say that is not unusual for you to  
12 write a song within a day?

13 A. No. I actually, with this case, because Amy, who I wrote  
14 *Thinking Out Loud* with is in town, we went in this weekend for  
15 three days and wrote ten songs. So, yeah, it's constant  
16 songwriting. Constant.

17 Q. Just if you could indulge us, could you name a few songs  
18 from + that you wrote in less than a few hours?

19 A. Honestly, in terms of, like, if a song takes longer than a  
20 day, it's not worth pursuing. I'm very much of the mindset  
21 that when inspiration hits, it happens quickly. *A Team* was  
22 super quick. *Give Me Love* was super quick. *Lego House* was  
23 super quick.

24 Yeah, it's -- when you see interviews with songwriters  
25 and they say, I wrote that song in half an hour, it's usually

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1 not that unbelievable to believe that. Because when  
2 inspiration hits, you get excited and it just comes out.

3 Q. Prior to writing *Thinking Out Loud*, did you receive any  
4 nominations for any songwriting or recording awards?

5 A. Yes. *The A Team* won -- again, like, you guys wouldn't know  
6 what it is, but it is basically the Grammys of England. It is  
7 a record called and the award would be Ivor Novello. They give  
8 three out per year. It is voted by songwriters. *The A Team*  
9 won the best song lyrically at that.

10 Then in terms of American awards, I actually got  
11 nominated 13 times at the Grammys before winning for *Thinking*  
12 *Out Loud*, but I had been to the Grammys pretty much every year.  
13 I had had a song of the year nomination for *The A Team*. I had  
14 best new artist. I had album of the year.

15 What else?

16 Q. Did you receive anything in the Brit Awards?

17 A. I did win at the Brit awards. Again, British awards, I won  
18 album of the year there, best new artist, best male. I had won  
19 a few awards on +.

20 Q. And you mentioned *A Team* being nominated for song the year  
21 at the Grammys. What type of award is song of the year?

22 A. Song of the year is one of the, quote-unquote, big four.  
23 They have album of the year, song of the year, record of the  
24 year, and best new artist, I think is in that big four thing.

25 And, yeah, so that was my very first nomination for

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1 the Grammys. I remember I was in a tour bus in Miami and I  
2 found out and it was, like, something that you just never  
3 expect as an English singer/songwriter to get.

4 But yeah, it was big deal.

5 Q. And just in terms of song of the year, what are they  
6 acknowledging with that award?

7 A. Songwriting, I guess. I guess. It meant a lot to me  
8 because that song is a song I had written 100 percent myself.  
9 It was cool to see my name up there next to Adele's and  
10 Beyonce, yeah.

11 Q. Turning to the next album that you released, on what album  
12 does *Thinking Out Loud* appear?

13 A. My second album called *X*.

14 Q. Do you recall when *X* came out?

15 A. I believe it was June 14, 2014. Maybe I'm just seeing the  
16 14 as 2014. It was in June.

17 Q. And when did you start writing songs for *X*?

18 A. I guess as soon as *+* was finished. There is some songs on  
19 the bonus of *X* that were written in the *+* period, but yeah, the  
20 majority of *X* was written while still on tour promoting the *+*  
21 album. I would have started it as soon as *+* came out.

22 Q. Is there a reason you used math symbols for your albums?

23 A. Yeah, I get asked that a lot. So the five EPs, basically  
24 when I was 18, I was, like, I'm going to make a plan and my  
25 plan was to make 15 things. So I had made the five EPs to

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1 showcase all -- the first one was a band EP. The second one  
2 was sort of an electronic singer/songwriter. Then there was a  
3 traditional just singer/songwriter folk thing. There was a  
4 live EP and then there was a collaboration project. Those were  
5 the first five.

6 + was then the addition onto that. X was designed to  
7 make everything I had done with + bigger. ÷ was a double  
8 album. - was going to strip everything away and be an acoustic  
9 album and = would be the sum of all the parts, like everything  
10 from all of them.

11 So that was -- I basically set out a ten-year plan in  
12 my head of what I wanted to do.

13 Q. Do you recall what the first single was from X?

14 A. First single was a song called *Sing* that I made with  
15 Pharrell.

16 Q. Who is Pharrell?

17 A. Pharrell is an artist music producer songwriter. There's  
18 lots of things Pharrell is. He does a lot of things,  
19 multifaceted.

20 Q. Do you recall when *Sing* was released as a single.

21 A. April, I think, of 2014.

22 Q. And do you recall, generally speaking, how it performed?

23 A. It was my first number one single in most major markets.  
24 It didn't go top ten in America, but I think it went to 12 or  
25 13.

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1 Q. And do you recall generally how the album X performed when  
2 it first came out in June 2014?

3 A. It went number one in most major markets like + and, yeah,  
4 everyone was happy.

5 Q. Do you recall what the second single was from X?

6 A. Second single was a song called *Don't* that I made with  
7 Benny Blanco. And, yeah, that was then more of a -- basically  
8 every hit that I had was getting bigger and bigger, basically.  
9 So that was my first top ten in America. And yeah, it went  
10 multiple times platinum as well as *Sing*.

11 Q. Do you recall when that was released as a single?

12 A. I couldn't give you a specific date. I imagine around the  
13 summer. I remember shooting a music video in the summer.

14 Q. Does August 2014 sound about right?

15 A. Could be.

16 Q. And was *Don't* released as a single before or after the  
17 album X came out?

18 A. It came out after the album came out.

19 Q. Do you recall how that single performed?

20 A. Yeah, it did really well commercially.

21 Q. And what was the third single released from X?

22 A. The third single was *Thinking Out Loud*.

23 Q. Do you recall when that was released?

24 A. I think -- I remember shooting the music video in  
25 September. I imagine around then.

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1 Q. So when TLO, *Thinking Out Loud*, was released as a single, X  
2 had been out for about three months, *Sing* had been out for  
3 about five months, and *Don't* had been out for about two months?

4 A. Yeah. There was also a promotional single called *One*,  
5 which was the first song on the album that was -- you call it  
6 an instant grab. So before the album comes out, we release  
7 that song, and that charted in most major territories. But it  
8 wasn't necessarily a single that was pushed to radio. So  
9 technically there had been three, four -- three singles.

10 Q. When in relation to the other songs that appear on X did  
11 you write *Thinking Out Loud*?

12 A. I wrote *Thinking Out Loud* towards the tail end. I am  
13 always writing music and always trying to make albums better  
14 and better and better. And yeah, I find that the pressure  
15 of -- the pressure being off an album basically makes you write  
16 better songs.

17 So when I thought I had finished +, for instance, I  
18 wrote *Give Me Love* thinking, oh, this is for the next album.  
19 That ended up being on + and arguably it's one of my favorite  
20 songs on the album. And same with X. I wrote a song called  
21 *I'm A Mess* and *Thinking Out Loud* towards the tail end, and they  
22 went on last minute. And ÷ would have been *Shape of You* is  
23 probably one of the last songs I made for that.

24 It's just you sort of have your foot on the gas when  
25 you're making an album, and then when you take your foot off



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1 the gas and relax, that's usually when good stuff happens.

2 Q. Now, with respect to X, prior to writing *Thinking Out Loud*,  
3 did you write any songs that appear on X in less than a single  
4 day?

5 A. Yeah. Again, like, I would say, most of them. The only  
6 song I can recall taking more than a day writing would be  
7 *Shivers* and I was just overthinking it. I had written the  
8 chorus. I knew the chorus was good, I didn't -- I was  
9 overthinking the verses.

10 But most songs that I've written have been completed  
11 the day I started them, yes.

12 Q. And I assume you can see what's been projected on the  
13 screen on your screen?

14 A. Oh, yeah. Sorry.

15 Q. We've been populating this as we have been talking.

16 So if you look at this, does this give a sense of some  
17 of your accomplishments and releases that existed prior to  
18 *Thinking Out Loud*?

19 A. Yeah. Yeah, it's quite cool seeing it like that.

20 Q. I think I can get you a copy.

21 A. Thanks. It's missing two, though.

22 Q. Oh, you mean the two blanks?

23 It's OK. I think we're good. You testified about an  
24 EP named *Songs I Wrote With Amy*.

25 Who is Amy?

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1 A. Amy Wadge is a singer/songwriter from Bristol who was  
2 signed to this publisher who Jake Gosling produced my first  
3 album, and those first EPs were assigned to. And I had grown  
4 up age 16 on the trains to go and write with her. I think it  
5 was a favor. I think she was doing someone a favor having me  
6 up there. And I remember going in there, and I had never  
7 worked -- I wasn't, like, that familiar with, like, what  
8 cowriting was.

9 And the producers that I had been put in with were  
10 very much, sort of, like producers. I would write two songs or  
11 we would create songs on the spot. I had never written  
12 one-on-one with another singer/songwriter and she was from the  
13 same world as me, she had the same influences as me.

14 We, you know, talked about being on the same scene and  
15 playing all the same gigs. We wrote a lot of songs the first  
16 day of meeting, I think four or five. And then the next day  
17 wrote another four or five, and kept in touch.

18 Q. Do you recall how old you were?

19 I don't know if you said it.

20 A. I believe I was 16 when I met her.

21 Q. What was your understanding about why you were meeting with  
22 her?

23 A. I think to broaden my musical horizons and try different  
24 things.

25 Q. And overall how long did you spend with Amy that first

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1 visit?

2 A. I went up and stayed for two days. She had just given  
3 birth to her first child, and I think -- I think her daughter  
4 was, like, three weeks old or something, so I wasn't trying to  
5 overstay my welcome.

6 Q. And how did you get along?

7 A. We got along great. You know, she's from the same world  
8 that I'm in. She's played empty rooms of people with acoustic  
9 guitars. She loves singing/songwriting music, and we really  
10 clicked. Yeah, we're still -- we are still working together.  
11 There's is obviously something there.

12 Q. I think you said you wrote eight or nine songs with her  
13 during that two-day period, is that correct?

14 A. I did, and I held on to those songs for a few years,  
15 thinking I would get signed. And then when I didn't, there was  
16 a collection of them, and they were so defined by the sound, I  
17 made an EP. And I didn't know what to call the EP. I called  
18 it *Songs I Wrote With Amy*.

19 Q. Can you describe how you and Amy worked together during  
20 those few days in terms of writing songs?

21 A. We sat guitar to guitar and wrote -- this was when I was  
22 16. I had just gotten into my first serious relationship,  
23 first relationship. And yeah, we were writing about that and  
24 school, love.

25 Q. So you had conversations with her about what was going on?

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1 A. Yeah. I was sort of, like, yeah, when you get into a  
2 songwriting session, it's usually, like, what's going on.  
3 Yeah, what do you want to write about. I had a lot that I  
4 wanted to write about.

5 Q. Would it be safe to say you and Amy became friends after  
6 that first meeting?

7 A. Totally, yeah. Totally. Yeah, we wrote together quite a  
8 lot. Yeah, we did some stuff for + and she opened up for me on  
9 my + tour and came and sung a couple of songs with me. We  
10 remained close.

11 Q. I would like to turn now to the song at issue in this case  
12 *Thinking Out Loud*.

13 When did you write *Thinking Out Loud*?

14 A. February 2014.

15 Q. Did you write *Thinking Out Loud* with someone?

16 A. I wrote *Thinking Out Loud* with Amy in my house.

17 Q. Geographically speaking, where were you and Amy when you  
18 wrote that song?

19 A. Geographically, I live in -- it's -- so there's London and  
20 then there is Essex and then there is Suffolk. We are kind of  
21 on the coast, about half an hour inland. Farm towns. And  
22 yeah, that's where I have lived since I was four, and I live  
23 currently.

24 Q. Did Amy come and stay with you for a bit?

25 A. Yeah. Amy drove up and, yeah, we -- we hang a lot. So she

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1 came up. She had been up to the house before, and she was  
2 staying with me to catch up.

3 Q. And do you recall what was going on in your personal life  
4 in February of 2014?

5 A. My granddad had just passed away and my grandmother had  
6 just -- she had lots of different types of cancer that had --  
7 one had removed her ability to walk. And so that is where the  
8 original conversation on the song had started.

9 I had just recently got into a new relationship a  
10 month prior to that, so we were talking about that too. And  
11 Amy was having similar things going on in her life in terms of  
12 members of her family were ill and whatnot.

13 Q. Do you remember anything about what Amy told you about what  
14 was going on in her life?

15 A. I remember her saying that it was either her mother or  
16 mother-in-law was ill. I can't remember specifics.

17 Q. Other than Amy, was anyone else at your home when you wrote  
18 *Thinking Out Loud*?

19 A. No.

20 Q. That visit when Amy came to her -- to your house, can you  
21 and Amy write any other songs together during that visit?

22 A. Yeah. We wrote a song that I did with a Dutch artist  
23 called Marvin Garrick, which actually never got released. We  
24 wrote that, then maybe one other one. I can remember writing  
25 one other one and *Thinking Out Loud*.

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1 Q. Just me of give me one second, please.

2 (Counsel confer)

3 Do you recall what time of day it was when you and Amy  
4 started writing *Thinking Out Loud*?

5 A. It was evening time because we paused it go to go dinner  
6 with my parents.

7 Q. Do you recall how the writing of *Thinking Out Loud* start?

8 A. We had written the Marvin Garrick song. I had gone  
9 upstairs to take a shower before dinner, and I have a kind of  
10 kitchen that extends into a living room. And then there is,  
11 like, it's not even a balcony, it's like a walkway, looks down  
12 on it. I remember coming out the shower and hearing Amy  
13 playing chords and mumbling, and looking down and being like,  
14 We need to do something with that. And then we went out for  
15 dinner and came back and then finished it.

16 Q. And do you recall what happened when you came back after  
17 dinner?

18 A. We finished the song.

19 Q. Were either of you using a guitar at the time when you were  
20 creating the song?

21 A. Yeah. I have lots of guitars at my house. Yeah, so we  
22 definitely would have been using guitars.

23 Q. And do you recall who wrote what?

24 Can you give us a sense of what you recall about the  
25 creation of the song after you came back from dinner?

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1 A. I mean, Amy definitely started strumming the chords and the  
2 song doesn't just have those chords in it, it does move  
3 elsewhere. We probably at some point went back and forth on  
4 chords for the bridge, which -- sorry, like the prechorus.  
5 English people call it bridge, but it's either way.

6 And then lyrically, it's very difficult to say who  
7 writes what in songwriting. It's very much a collaborative,  
8 what about this and what about this. And you sing back and  
9 forth a melody and somebody changes a bit of the melody. But  
10 it's very -- it's a collaboration, it's not -- yeah, it's not  
11 just someone going, sing this, do this. It's very much you  
12 discuss.

13 Q. Was that process any different for the vocal melodies that  
14 became *Thinking Out Loud*; do you recall the process for that?

15 A. Yeah. I think you just, like, I find when I write vocal  
16 melodies, it's like phonetics. You start singing or mumbling  
17 anything. So the original words of *Thinking Out Loud* were, I'm  
18 singing out loud, and that phonetically is *Thinking Out Loud*.  
19 But originally it was I'm singing out loud.

20 We were writing the song and singing phonetically  
21 melodies, and then words would fall into those melodies,  
22 basically.

23 Q. When did you and Amy finish writing the song together?

24 A. I assume it was that night.

25 Q. And do you have a recollection as to start to finish how

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1 long it took you to write the song?

2 A. Really not that long. Like, really not that long. It was  
3 one of those ones where you, like, you know when it is a good  
4 song when it is finished and you're excited about it. If  
5 you're, like, slogging away for hours and hour, when you finish  
6 it, you're -- you sort of second-guess yourself. You go, oh,  
7 is it good, because it took quite a lot to get here.

8 When it just happens like that, you sort of know that  
9 it's decent.

10 Q. And after you and Amy finished writing the song that night,  
11 did you do anything to preserve what you had written?

12 A. We recorded it on iPhone voice message.

13 Q. Was the writing process for *Thinking Out Loud* any different  
14 than how you had written songs in the past with Amy?

15 A. No, like not at all.

16 Q. Did you and Amy discuss the meaning of the lyrics while  
17 writing *Thinking Out Loud*?

18 A. I think we discussed it beforehand and, yeah, there  
19 probably would have been small discussions here and there about  
20 what certain lyrics were and what they meant. But the bulk of  
21 the discussion for most songs that you would write with someone  
22 would happen before, and then you get into it. And maybe every  
23 now and then you would write a line. Oh, this line is that  
24 because of this, but you wouldn't, like, stop and talk for two  
25 hours. You are sort of in the moment.



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1 Q. I think you mentioned about your grandparents.

2 Were you also in a relationship or in a relationship  
3 at that time?

4 A. I had just gotten into a new relationship, yeah. But the  
5 song is sort of, like, it's sort of a little bit of both, you  
6 know. Like, it was essentially looking at the love that --  
7 just to put it in context, it was two sets of grandparents.

8 So I've got an Irish set of grandparents, and my Irish  
9 grandfather passed away and he left my Irish grandmother alone.  
10 And, you know, they had been together for 60 years. I remember  
11 that was an inspiration. And then my other set of  
12 grandparents -- who were both around at the time, my  
13 grandmother now passed away, they were both around at the time,  
14 she had lost the ability to walk.

15 So it was sort of looking at this side and being like,  
16 wow, my grandmother has been with my grandfather for over 60  
17 years, what must she be feeling right now. And then looking at  
18 my grandfather on this side, and being like, wow, my  
19 grandmother has been with my grandfather over 60 years, what  
20 must he be feeling now that she's lost the ability to walk.

21 It's very much drawing from two different sides of my  
22 family and, yeah, I've got another song about my grandfather on  
23 that album, on my Irish side. He died and had Alzheimer's, so  
24 I wrote a song about his Alzheimer's and him forgetting who my  
25 grandmother was.

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1 I drew inspiration a lot from things in my life and  
2 family and emotion and stuff.

3 Q. Who came up with the opening basic chord progression for  
4 *Thinking Out Loud*?

5 A. I mean, Amy was playing those chords, so Amy.

6 Q. And can you tell us what that basic chord progression is  
7 that Amy played?

8 A. It's just -- so D, and then it's D with an F sharp, and  
9 then G with a D, and then A. But then you add, so it's --

10 (Guitar played)

11 Q. Is that the same basic chord progression that appears in  
12 the commercial recording of *Thinking Out Loud*?

13 A. Yeah, that. It's just that over and over and over again.

14 (Guitar played)

15 Q. I want to direct your attention to the commercially  
16 released recording of *Thinking Out Loud* and to Dr. Stewart's  
17 testimony about the first 24 seconds.

18 You were here in the courtroom when Dr. Stewart  
19 testified, correct?

20 A. Yeah.

21 Q. And you were here when Dr. Stewart testified that the  
22 second chord in the *Thinking Out Loud* chord progression during  
23 the first 24 seconds of *Thinking Out Loud* is different from the  
24 chord progression --

25 A. Well, I think he's saying that --

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1 Q. Let me just finish the question.

2 A. Sorry.

3 Q. For the court reporter, if nothing else. I'm going to say  
4 it again.

5 You were here when Dr. Stewart testified that the  
6 second chord during the first 24 seconds of *Thinking Out Loud*  
7 is different from the second chord during the remainder of the  
8 song, you were here for that, correct?

9 A. I was here for that, yes.

10 Q. And what do you have to say about that?

11 A. I think he's sort of saying that because it helps his  
12 argument, obviously. When you listen to the song, like, I was  
13 listening to it being, like, I know what I play every single  
14 gig is those chords. I remember what I recorded. I'm not --  
15 I'm not the world's most talented guitar player.

16 (Guitar played)

17 So I would just play that, over and over and over  
18 again. But what he's saying I did was for that 24 seconds is  
19 go...

20 (Guitar played)

21 Q. Did you do that?

22 A. Well, no. Yeah, if you listen to it, you can't tell.  
23 Like, he's listening to it just, or assuming, but I'm going,  
24 *When your legs don't...*

25 That's exactly when the vocals come in. how can you

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1 say that, when your legs don't work like they used to -- it's  
2 just him -- basically, it works very, very well for him, it's  
3 just that is not the truth.

4 MS. FARKAS: Your Honor, this might be a good breaking  
5 point if it's OK with you.

6 THE COURT: We will resume at 11 o'clock Monday  
7 morning.

8 MS. FARKAS: Thank you, your Honor.

9 THE COURT: Have a good weekend.

10 (Jury not present)

11 THE COURT: You're all free to go.

12 (Adjourned to Monday, May 1, 2023, at 11: a.m.)  
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